

HUMAN SERVICES

DIVISION OF DEVELOPMENTAL DISABILITIES

Standards for Community Residences for Persons with Head Injuries

Proposed New Rules: N.J.A.C. 10:44C

Authorized By: Gwendolyn L. Harris, Commissioner,
Department of Human Services

Authority: N.J.S.A. 30:11B-1 et seq., specifically 30:11B-4

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN2003 - 84

Submit Comments By: May 16, 2003 **to:**

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The agency proposal follows:

Summary

At the present time, approximately 160,000 persons in New Jersey are living with disabilities resulting from a traumatic brain injury. In addition, every year over 8,000 New Jersey citizens suffer a brain injury. The leading causes of brain injury in this State, according to the most recent statistics, are motor vehicle accidents, falls and acts of violence. The majority of persons who suffer a brain injury (70 percent) return home after acute care treatment. However, for many reasons a great number of these persons require and would benefit from a structured and supervised residential environment in order to achieve a degree of habilitation or rehabilitation that will enhance their independence in the community. All such persons who have sustained a brain injury, and who require food, shelter and personal guidance in a community

residence operated by anyone other than the person's family member, are entitled, under these proposed new rules, to basic protections in regards to health, safety and welfare. In addition, the proposed new rules require agencies that provide community residential services to persons with head injury to support them in the pursuit of their aspirations and dreams by allowing and encouraging them to exercise their rights, by providing professional and meaningful interventions, by advocating for them and by encouraging them to undertake dignified risk.

Persons with head injury who reside in community residences are not only entitled to the same protections and rights that all citizens enjoy but also to the rights delineated in the proposed new rules. Therefore, pursuant to N.J.S.A. 30:11B-1 et seq., these proposed new rules constitute the minimum administrative, physical plant, fire safety, program and staffing requirements for community residences for persons with head injury that are licensed by the Department to serve persons who have sustained such injury. The purpose of the rules is to protect the health, safety, welfare and human rights of the individuals who reside in these facilities, and to allow such individuals to develop their fullest potential while residing in an environment which is normalized and supportive. The rules provide for individualized delivery of services to persons served, the establishment and maintenance of a safe environment, the provision to undertake dignified risk, and the delineation of personal rights to protect them and to assist them in maximizing their potential.

The Department intends to rescind the current proposed rule for community residences for persons with head injury and propose this rule in its stead. The Department received comments at the last proposal from the following agencies serving persons with head injury: PLUS New Jersey, Mentor, Inc. and Rehabilitation Specialists, Inc. The Department also received comments from the Department of Community Affairs, New Jersey Protection &

Advocacy and the New Jersey State Nurses Association. Finally, the Department received comments from three private citizens: Vito Albanese, Sally Jankowsky and Muriel Overmars.

Concern was expressed about the previously proposed rules on psychotropic medication. It was suggested that, as proposed, the rules were excessive in that they made the regulated agency responsible for the actions of physicians in prescribing psychotropic medication. The commenters correctly pointed out that the wording of this section of the rules placed unwarranted responsibility on the provider of service to monitor the actions of licensed physicians in order to assure that the physicians performed their responsibilities correctly. The Department agrees with this concern. The section on psychotropic medication has been deleted and replaced with requirements taken from N.J.A.C. 10:47-6.6. These requirements do not place responsibility on the regulated agency for assuring that provisions that are not under their control are carried out by licensed medical personnel who are not employed by the regulated agency. The requirements, in contrast, only specify actions to be taken by the licensee that are under the licensee's control.

The previously proposed rules contained long sections on drug and alcohol programs and outpatient mental health programs. Commenters noted that these programs are already regulated in the Administrative Code: drug and alcohol programs by N.J.A.C. 8:43A and outpatient mental health programs by N.J.A.C. 10:37-10. The Department agrees and has incorporated these rules by reference to the appropriate rules.

Commenters noted that the proposed definition of head injury did not reflect current, state of the art terminology that is based upon nationally accepted terms and definitions. The Department agrees and has included a definition for head injury that incorporates the federal definition for traumatic brain injury found at 42 U.S.C 280b-1b. The definition is incorporated to

more properly identify the intent of this rule in regards to the population that will be served and protected.

Several commenters claimed that the fees to be charged to operate a community residence were too high and would inhibit the development of new residences while placing a significant and unwarranted burden on existing residences. The Department agrees and has amended the fee schedule.

An agency executive commented that it was unwise not to include the definitions for “group home,” “supervised apartment” and “supported living” from the standards as agencies rely on those definitions in order to design appropriate community residential programs. The Department agrees and has included those definitions.

The New Jersey State Nurses Association recommended that the rule include “advance practice nurse” and the duties and responsibilities that an Advance practice nurse is authorized to perform. Under current law (N.J.S.A.45:11-23 et seq.) an advance practice nurse has the authority to provide primary care as an independent practitioner. Elements of such care include the authority to take histories, perform physical examinations and direct ongoing medication management. The agency agrees and has added the definition at N.J.A.C.10:44C-1.3. In addition, the various requirements concerning an advance practice nurse within the context of this rule have been added to the text at N.J.A.C. 10:44C-2.4(e), N.J.A.C. 10:44C-2.4(f)2, N.J.A.C. 10:44C-2.4(g)1, N.J.A.C. 10:44C-2.5(d)2, N.J.A.C. 10:44C-2.9(d)1.v, N.J.A.C. 10:44C-2.9(d)1.xi, N.J.A.C. 10:44C-5.1(a), N.J.A.C. 10:44C-5.1(b)1, N.J.A.C. 10:44C-5.1(d)1.i, N.J.A.C. 10:44C-5.1(d)1.ii, N.J.A.C. 10:44C-5.1(d)2, N.J.A.C. 10:44C-5.1(h), N.J.A.C. 10:44C-5.1(h)1, N.J.A.C. 10:44C-5.1(h)2 and N.J.A.C. 10:44C-5.3(g)1.

N.J.A.C. 10:44C-6.3(b) has been changed because of concern expressed by the Department of Community Affairs. The concern is that immediate action must take place to enable the person served to evacuate the residence in three minutes or less if the person served exceeds the allotted time. The Department thus proposes that if the person served is not able to evacuate in three minutes or less after immediate training, the licensee must immediately move to the provisions contained in the new subparagraph, N.J.A.C. 10:44C-6.3(b)1i, which states that training in evacuation shall be immediately provided to the person served. If the person served is unable to evacuate the residence in three minutes or less after training, the licensee shall assure that N.J.A.C. 10:44C-6.3(b) 2, 3 or 4, or a combination thereof, is/are immediately implemented.

The Department of Community Affairs also recommended rule insertions regarding windows at N.J.A.C. 10:44C-6.12(e) and provisions concerning basements at N.J.A.C. 10:44C-6.13(a)2 and 2i. The Department of Human Services agrees and has included those provisions. N.J.A.C. 10:44C-6.16(b) has been changed to include the provision of a second means of egress as a measure to assure safety. With this provision, approval by the local construction official is not necessary.

In addition to the changes prompted by those submitting comments, the Department has initiated changes from the previously proposed rule (see 33 N.J.R. 2964(a)). The Department believes will not only enhance and clarify the rule but will provide clearer direction to licensees. The following changes have been initiated by the agency:

The agency has added, at N.J.A.C. 10:44C-1.4(b)1 and 2, additional provisions designed to provide protection for persons with head injuries. These provisions disqualify applicants that have committed crimes of moral turpitude or that have committed abuse against persons with head injury who reside in residences governed by this rule.

N.J.A.C. 10:44C-1.4(m) has been included to assure that licensees understand that no barriers may, at any time, be placed in the way of inspections or investigations conducted by the Department.

N.J.A.C. 10:44C-1.13(a)1 has been added to underscore the authority of the Commissioner of the Department of Human Services to compel testimony and the production of documents in matters relating to the governance of community residences for persons with head injury.

N.J.A.C. 10:44C-1.13(d) states that the licensing agency may either jointly conduct investigations with SRU or authorized SRU to serve as the sole investigating body concerning complaints which allege abuse, neglect or exploitation of persons in a community residence for persons with head injuries. N.J.A.C. 10:44C-1.14(c)2 has been reworded and N.J.A.C. 10:44C-1.14(c)2i, ii and iii have been added to provide specificity and clarity regarding the actions the Department shall take if imminent danger is determined to be present.

N.J.A.C. 10:44C-2.4(b)1 has been added to offer the same protections in regards to hiring agency staff as those protections afforded at N.J.A.C. 10:44C-1.4(b)1 and 2 which pertain to the licensee.

N.J.A.C. 10:44C-2.4(d) has been reworded. The wording mirrors language at N.J.S.A. 30:6D-64, and is intended to afford persons with head injuries an equal measure of protection regarding the background checks for applicants for employment and for staff already employed by a licensee operating a community residence for persons with head injuries.

N.J.A.C. 10:44C-2.8(d)3i and ii have been encapsulated in N.J.A.C. 10:44C-2.8(d)4i. The language at N.J.A.C. 10:44C-2.8(d)3 and 4 is more economical as the requirements for staff coverage and the procedural steps for adjusting that coverage are contained in one section.

The Department has included new language at N.J.A.C. 10:44C-2.9(e) to assure continuity of service when persons served are referred to another agency.

N.J.A.C. 10:44C-3.1(e), the Department has eliminated the requirement that staff are familiar with and observe the rights and responsibilities in the approved rights document as there is no Department-approved rights document for persons served.

N.J.A.C. 10:44C-3.5(a) through (d) replaces the previous N.J.A.C. 10:44C-3.5(a). The previous language only identified the responsibility of the person served and did not provide any procedural guidance to licensees regarding the steps that must be taken to sufficiently inform persons served of their right to give or refuse to give consent, particularly within the context of treatment options. Moreover, the language was not sufficiently specific to enable persons served, licensees and families and advocates to understand the various situations in which informed consent must be obtained.

New language at N.J.A.C. 10:44C-3.6(a) has been inserted. The previous language only identified, again, expectations regarding persons served; did not identify the proper procedure for approval and review of modifications of rights; did not identify procedural safeguards for ongoing review of those modifications; and, in fact, identified the licensee or the licensee's staff as the sole arbiters of "proper" behavior.

N.J.A.C. 10:44C-3.6(b)1 has been added to underscore the fact that a fundamental purpose of the Human Rights Committee is to review all restrictions or modifications of the rights of persons served.

N.J.A.C. 10:44C-4.1(a) 3i has been included to assure that the licensee will inform the persons served and their legal guardians of their right to appeal any restrictions and modifications, and additionally, to provide them with information specifically advising them of

their rights to obtain an advocate to assist with the appeal, and offering a listing of such advocates.

The previous N.J.A.C. 10:44C-4.1(b) has been removed from the rule because the Division does not fund community residences for persons with head injuries.

N.J.A.C. 10:44C-5.1(b)1 has been eliminated because the Department has no authority to require of a physician what should be included in a physical examination.

N.J.A.C. 10:44C-5.2(j) has been removed because the licensing agency does not have the authority to mandate the particular medical specialty that shall be relied upon for rehabilitation services.

N.J.A.C. 10:44C-5.3(a) has been incorporated at N.J.A.C. 10:44C-5.2(j). N.J.A.C. 10:44C-5.3(a)1 has been removed as a separate requirement in order to eliminate duplicative recording requirements. N.J.A.C. 10:44C-5.2(i)6 has been removed because it is impossible to purchase stock supplies of prescribed medications and because this requirement creates confusion when compared to N.J.A.C. 10:44C-5.2(h), which requires an adequate supply of medication to be available for persons served at all times. N.J.A.C. 10:44C-5.2(i)8 has been removed because the intent of the requirement at N.J.A.C. 10:44C-5.2(j) is for the medical primary care provider to authorize and approve all medications taken by or administered to persons served.

N.J.A.C. 10:44C-5.5 has been changed to N.J.A.C. 10:44C-5.4. “9-1-1” has been substituted for the list of telephone numbers previously listed at N.J.A.C. 10:44C-5.5(a) as 9-1-1 is accessible in all New Jersey municipalities. In addition, each Division hotline number has been enumerated, and the telephone number of the Special Response Unit has been added because

licensees are now required to contact the SRU directly if an unusual incident occurs in one of the licensee's programs.

N.J.A.C. 10:44C-5.6(d) has been changed to N.J.A.C. 10:44C-5.5(d). N.J.A.C. 10:44C-5.5(d)1ii has been added to afford licensees an objective and quantifiable framework in which to assist or supervise persons served in meal planning.

A brief description of each subchapter follows:

Subchapter 1 includes a description of the purpose and scope of the chapter, definitions of words and terms used in the rules, a description of the application, licensing, inspection and renewal process, licensing fees, search warrants and the suppression of illegal operations, as well as the sanctions for noncompliance.

Subchapter 2 addresses general organization and administration requirements; staff qualifications and personnel standards, including the training required and the staffing minimums; policy and procedure manuals; records and reporting requirements for incidents, and general programming and financial matters, as well as record keeping requirements for persons served.

Subchapter 3 includes standards for notifying persons served regarding their right to advocacy services, and an enumeration of rights of residents. The subchapter also deals with consent and guardianship, and the safeguards that must be in place whenever rights are restricted. The subchapter also specifies minimum requirements for the grievance process that may be utilized by any person residing in a residence, as well as requirements for conducting house meetings.

Subchapter 4 addresses service delivery and treatment, including pre-admission and admission requirements, changes in supports or services, discharges or transfers from service, and Individual Treatment Plan (ITP) requirements. The subchapter also establishes the requirements for alcohol and other drug programs as well as outpatient mental health programs.

Subchapter 5, Health and Safety, includes the general medical and health standards, requirements for the storage and administration of prescribed medication and over-the-counter preparations, psychotropic medications, emergency telephone numbers, as well as requirements

for food, clothing and vehicle safety. A requirement has been added at N.J.A.C. 10:44C-5.5(d)1ii to assure healthful diets for persons served.

Subchapter 6 addresses fire safety requirements, physical plant requirements, and maintenance standards.

Because the Division has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a) 5.

Social Impact

The proposed new rules have an impact on the approximately 250 persons with head injury (primarily adults) who currently live in community residences licensed by the Department of Human Services. There are nine agencies that operate approximately 50 community residences for persons with head injury in New Jersey. Without rules governing such facilities, each individual, family member or advocate of the individual would be forced to separately evaluate conditions affecting health, safety, welfare, rights and the provision of services in each facility. Uniform standards provide a fair, impartial and equitable basis upon which persons served, the public and the Department may rely when evaluating the merits of community residences seeking licensure to serve persons with head injury. The rules, as delineated in the Summary, provide to persons with head injury and the public a level of service appropriate to the persons served, while preserving the health, safety, welfare and rights of persons with head injury in the least restrictive manner possible.

Economic Impact

In drafting the previously proposed rules, the licensing agency did not fully assess the potential economic impact that these rules may have on persons served and their families, and on the providers of service. In fact, the proposed new rules may impose a significant economic burden on the persons who live in community residences and on their families because of the costs that may be passed down with the requirement for fees and more stringent personnel requirements. The rules will also impose a significant economic burden on the providers of such services with the imposition of those fees and with the more stringent requirements for certain professional staff enumerated at N.J.A.C. 10:44C-2.5. However, specific fees are necessary to offset significant administrative costs for the licensing agency, as, typically, the Department does not directly fund the operation of such residences. In addition, the provision of some services, both administratively and programmatically, require the employment of persons with proper professional credentials. Almost all of the requirements of the rules impose some cost on the regulated public. Costs of construction and maintenance of the facility, as well as provision of staff and services, are based upon such factors as salaries for employees, costs of materials, costs of required insurance and general administrative costs.

Federal Standards Statement

The proposed new rules have no provision controlled or regulated by any Federal requirements, except N.J.A.C. 10:44C-5.9(a), which states the “the licensee shall comply with the Occupational Safety and Health Administration’s regulations, as they may apply to a

particular type of residence the licensee operates, and shall ensure consistent and sound enforcement”. The proposed new rule does not exceed the Federal law, therefore, a Federal standards analysis pursuant to Executive Order No. 27 (1994) and P.L. 1995, c.65 is not required.

Jobs Impact

With the requirement of staffing ratios, the proposed rule may have an impact on direct care jobs to be generated. In addition, with requirements regarding the qualifications of professional staff, there may be an impact on such positions, such as increased opportunities for those persons possessing the proper credentials to gain employment with a regulated facility.

Agriculture Industry Impact

The proposed new rules will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed new rules have an impact on approximately nine agencies, of which approximately 80 percent may be considered small businesses as the term is described in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; that is, they have less than 100 full-time employees. The reporting, recordkeeping and other requirements, which are delineated more specifically in the Summary and Economic Impact statements, cannot provide any differentiation

which is based upon business size, since the overriding concern must be for the health, safety and welfare of the individuals living in the community residences. The performance and design standards embodied in the rules can be met by varying levels of provider expenditures, and waivers can be sought in accordance with the provisions of N.J.A.C. 10:44C-1.10. Professional services are required by the rules, including the requirement at N.J.A.C. 10:44C-2.7(c)1i that only nursing personnel may have feeding tube responsibilities. While staff are required to be trained, and any salary expense would be the responsibility of the facility, the actual training is provided free of charge by the Department.

Smart Growth Impact

The Department anticipates that the proposed new rule will have no impact on smart growth in New Jersey or in the implementation of the New Jersey State Development and Redevelopment Plan.

Full text of the proposed new rules follows:

CHAPTER 44C

STANDARDS FOR COMMUNITY RESIDENCES FOR PERSONS WITH HEAD INJURIES

SUBCHAPTER 1 GENERAL PROVISIONS

10:44C-1.1 Purpose and scope

(a) The purpose of this chapter is to establish specific requirements for the provision of residential services to persons with head injuries who reside in group homes, supervised apartments or supported living programs.

(b) Group homes, supervised apartments, and supported living programs designed specifically to meet the needs of developmentally disabled individuals are licensed under N.J.A.C. 10:44A.

(c) Community care residences, living arrangements in which a Family Care or Skill Development program is provided in a private home or apartment, are licensed under N.J.A.C. 10:44B.

(d) If none of the persons with head injury at a particular place of residence requires personal guidance, as determined by the transdisciplinary team, licensing shall be available on a strictly voluntary basis, in recognition of a person's right to choose independent living.

10:44C-1.2 Severability

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect and to this end the provisions of this chapter are severable.

10:44C-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Abuse" means any act or omission that deprives a person served of his or her rights or which has the potential to cause or causes actual physical injury or emotional harm or distress. Examples of abuse include, but are not limited to: acts that cause pain, cuts, bruises, loss of a body function; sexual abuse; temporary or permanent disfigurement; death; striking with a closed or open hand; pushing to the ground or shoving aggressively; twisting a limb; pulling hair; withholding food or water; forcing a person served to eat substances obnoxious to the person served; dousing with water; use of verbal or other communications to curse, vilify, degrade a person or threaten a person served with physical injury. Planned use of behavioral intervention techniques, which are part of an approved behavior modification plan or individual treatment plan, are not considered abuse or neglect.

"Adaptive behavior" means behavior that in a cultural or functional context indicates the ability of a person served to adjust to environmental demands in a fashion that benefits the person served while respecting the rights of those with whom he or she comes in contact.

"Advance practice nurse," also known as a nurse practitioner (see N.J.S.A. 45:11-46c), is defined in N.J.S.A. 45:11-23 and may, in addition to those tasks lawfully performed by a registered professional nurse, manage specific common deviations from wellness and stabilized

long term care illnesses by initiating laboratory and other diagnostic tests and prescribing certain medications and devices (see N.J.S.A 45:11-49).

"Advocacy services" means one or more of the following services:

1. Personal advocacy: one-to-one advocacy to secure the rights of people with head injuries and their families;
2. Systems advocacy: seeking to change a policy or practice that affects people with head injuries;
3. Legislative advocacy as permitted by law: seeking legislative enactments that would enhance the rights and/or opportunities for people with disabilities or persons with head injury;
4. Legal advocacy: using the judicial and quasi-judicial systems to protect the rights of persons with head injuries;
5. Self-advocacy: advocacy of a person served on his or her own behalf.

"Affirming rights" means respecting rights and providing the assistance persons served need to exercise those rights and to engage in self-advocacy.

"Affiliation" means a relationship, usually signified by a written agreement, between two organizations, under the terms of which one organization agrees to provide specified services and personnel to meet the needs of the other organization, usually on a scheduled basis.

"Agency" means the licensee and his or her staff responsible for the care and safety of the persons served in each community residence for persons with head injuries licensed under this chapter.

"Approved" means approved by the licensing agency.

“Assessment” means the process of identifying the strengths and needs of a person served, and the conditions that impede or promote development. There are two levels of assessment: screening and evaluation.

"Assistive device" means any implement or mechanism that enables a person with head injuries to increase, maintain, and/or improve his or her functioning capabilities.

"Assistive technology" means the use of commercial or custom-designed devices, modifications, and/or related technical services to increase, maintain, and/or improve the functional capabilities of persons with head injuries who have resulting disabilities.

“Audiology” means services provided by an audiologist who meets applicable legal requirements for the provision of audiology services and who meets the academic and work experience standards established by the American Speech-Language and Hearing Association for the Certificate of Clinical Competence in Audiology.

"Authorization to operate" means official correspondence issued by the licensing agency to permit a licensee to operate beyond the license expiration date, because of a delay in completing a licensing inspection.

"Banking institutions" means and includes banks, trust companies, national banking associations, savings banks, savings and loan associations and Federal savings and loan associations.

"Behavior modification program" means a written, approved plan that employs techniques to:

1. Decrease maladaptive behavior; and
2. Increase adaptive behavior.

"Board certification" means satisfactory completion of the examination and certification process of one of the members of the American Board of Medical Specialties or the American Osteopathic Association.

"Business manager" means the staff member charged with the responsibility of providing oversight of business practices, including budgets, purchasing, accounting and personnel practices.

"Capacity" means the maximum number of persons with head injury who may reside in the licensed residence.

"Case manager" means the person responsible for the development, coordination and overall management of the individual treatment plan for each person served. There may also be a case manager external to the agency, such as one acting on behalf of an insurance company or other payor source.

"Clinical Director" means the person who oversees the provision of rehabilitation and habilitation services.

"Cognitive rehabilitation" means a systematic, functionally oriented service of therapeutic cognitive activities based on an assessment and an understanding of the behavior of a person served. Services are directed to achieve functional improvement by:

1. Reinforcing, strengthening, or reestablishing previously learned patterns of behavior; or
2. Establishing new patterns of cognitive activity or mechanisms to compensate for impaired neurological systems.

"Commensurate wage" means a wage that is proportionate to the prevailing wage paid to similarly experienced workers in the geographic vicinity of the person's place of employment for

essentially the same type of work based on a comparison of the quantity of work produced by the worker with a head injury and a resulting disability with those of work produced by similarly experienced workers. This wage is to be determined by time studies as approved by the New Jersey Department of Labor.

"Community residence for persons with head injuries" means a community residential facility licensed pursuant to P.L. 1977, c.448 (N.J.S.A. 30:11B-1 et seq.) providing food, shelter and personal guidance and/or training, under such supervision as required, to not more than 15 persons with head injuries, who require assistance, temporarily or permanently, in order to live in the community, and shall include, but not be limited to: group homes, halfway houses, supervised apartment living arrangements, and hostels. Such a residence shall not be considered a health care facility within the meaning of the "Health Care Facilities Planning Act," P.L.1971, c.136 (N.J.S.A. 26:2H-1 et seq.)

"Commissioner" means the Commissioner, Department of Human Services.

"Critical information" includes, but is not limited to: unexpected behavioral outbursts, unexpected or unexplained mood swings on the part of persons served, the administration of PRN medication, problems with transportation, visits to the doctor or hospital, a reportable communicable disease, and missed medical appointments.

"Deficiency" means that an applicant or licensee has not complied with a rule contained in this chapter.

"Department" means the Department of Human Services.

"Dignity of risk" means:

1. Providing a person served with new and untried experiences;

2. Assisting the person served when he/she chooses among possible courses of action in trying new experiences;
3. Assisting the person served in determining the risks and consequences;
4. Assessing the risks and consequences on behalf of the person served;
5. Assuring that the person served and the legal guardian (if any) understand such risks and consequences; and
6. Defining, documenting and providing the means of support necessary to establish the allowable limits of the risk.

"Division" means the Division of Developmental Disabilities.

"Evaluation" means an assessment process performed by qualified professionals according to procedures that incorporate the use, when possible, of standardized tests and measures.

"Executive leadership" means the person or persons to whom the licensee may delegate administrative authority over the licensee's community based programs regulated or under contract with the Department.

"Exploitation" means any unjust or improper use of a person served or his or her resources for one's profit, advantage or gratification.

"Falsification" means intentionally making a record or a document false, giving a false appearance to a record or a document, tampering with a record or a document.

"Fiduciary capacity" means that the licensee acts with a high degree of good faith when handling money entrusted to the licensee by persons served.

"Fire official" means a person certified by the Commissioner of the Department of Community Affairs, and appointed or designated by the appointing authority of a local enforcing

agency to direct the enforcement of the Uniform Fire Safety Act, and any certified fire inspector working under the direction of the fire official.

"Full license" means the authorization to operate based upon substantial compliance with this chapter. A full license shall be effective for up to one year.

"Functional limitations" means actual behaviors or mental or physical disabilities exhibited by persons served and/or conditions presented by their environments that shall be modified or minimized in order for persons served to fulfill their potential or maximize their functioning.

"Functional literacy" means the ability to read, comprehend, and assimilate the oral and written language and numerical information required to function in a specific work or community environment, with or without accommodation strategies. Accommodation strategies may include, but are not limited to, picture instructions or calculators, computers and/or audiovisual tapes.

"Group homes" means living arrangements operated in residences leased or owned by the licensee, which provide the opportunity for persons served to live together in a home, sharing in chores and the overall management of the residence. Staff in a group home provide supervision, training, and/or assistance in a variety of forms and intensity as required to assist the persons served as they move toward independence.

"Guardian" means a person or agency appointed by a court of competent jurisdiction who is otherwise legally authorized and responsible to act on behalf of a minor or incompetent adult to assure provision for the health, safety, and welfare of the person and to protect his or her rights.

"Head injury" means, for the purposes of this chapter, traumatic brain injury.

"Human Rights Committee" means a group comprised of professionals, persons served, advocates and/or interested persons from the community at large that functions as an advisory group to the licensee, the executive leadership, and the Clinical Director on issues directly or indirectly affecting rights.

"Imminent danger" means a situation that could be expected to cause a serious risk to the health, safety or welfare of a person served.

"Impairment" means any loss or abnormality of psychological, cognitive, physiological or anatomical structure or functioning.

"Individual treatment plan" (ITP) means a written plan of intervention and action developed by the transdisciplinary team. It describes the methodologies, strategies and programs that will be employed and monitored to provide habilitation or rehabilitation to enable persons served to acquire or restore functional skills to the highest possible level of performance, within a reasonable time period. The ITP shall also document barriers to implementation and goal achievement. The ITP shall be reviewed and modified on a regular and as-needed basis, but no less than annually. For a person who makes only specific services requests, the ITP is a service plan that addresses only those specific requests. The ITP may be appealed in accordance with licensee procedure.

"Informed consent" means a formal expression, oral or written, of agreement with a proposed course of action by someone who has the capacity, the information and the ability to render voluntary agreement.

"Integration" means participation in the mainstream of community life, that persons served maintain social relationships with family members, peers, and others in the community who do not have head injuries. In addition, integration means that persons served have equal

access to and full participation in community resources and activities available to the general public.

"License" means the authorization issued by the Department of Human Services to operate a community residence providing services to persons with head injury.

"Licensee" means the person, partnership, or corporation responsible for providing services associated with the operation of a community residence(s).

"Licensing agency" means the Office of Licensing and Inspections, within the Department of Human Services.

"Maladaptive behavior" means behavior that is injurious or destructive to self, others, or the environment, that demonstrates a reduction in or lack of ability that is necessary to adjust to environmental demands.

"Mental health program" means a service designed to develop, support, and maximize the quality of life and functional abilities of persons served with severe and/or persistent and diagnosed psychiatric disabilities, as a result of, or in addition to the head injury.

"Mini-team review" means a modified version of a complete transdisciplinary team, the composition of which shall always include the person served, and/or his or her guardian, and/or personal representative; the case manager; and the individual in the discipline(s) knowledgeable in the issues for review.

"Mobile non-ambulatory person" means a person served capable of independent bed to wheelchair transfer and capable of following procedures for evacuation from the facility.

"Negative licensing action" means an action which imposes a restriction on a licensee and may include suspension of admissions, issuance of a provisional license, a reduction in the

licensed capacity, a denial of the license, a non-renewal of the license, a suspension of the license, or a revocation of the license.

"Neglect" means the failure of a paid or unpaid caregiver to provide for the care and safety of persons under his or her supervision, or failure to provide and maintain proper and sufficient food, clothing, health care, shelter, and/or supervision.

"Non-ambulatory person" means a person served not capable of independent ambulation.

"Occupant" means any person lawfully occupying or sharing occupancy of a unit of dwelling space on a regular basis or for more than 30 consecutive days.

"Occupational therapist" means a person who is currently certified as an occupational therapist by the American Occupational Therapy Certification Board and who meets any current requirements of licensure or registration in New Jersey.

"Owner" means the person, corporation or association who must comply with N.J.S.A. 30:11B-1 et seq. and this chapter. The owner may be responsible for day-to-day operations or may employ an executive leadership, if so desired or if required by the qualifications associated with the executive leadership title.

"Payment authority" means a person, a private corporation (usually an insurance company) or public agency (local, State or Federal government) that provides funding of the residential placement and related services for care of the person served.

"Person served" means a person with head injury receiving services in a community residence for persons with head injuries.

"Person with head injury" means a person with head injury receiving services in a community residence for persons with head injuries.

"Personal advocate" means a person selected by a person served to provide assistance or act on his or her behalf in non-legal matters.

"Personal care" means services and supports including, but not limited to:

1. Bathing, hair care, skin care, shaving, nail care, and oral hygiene;
2. Alimentary procedures to assist one with eating and bowel and bladder management;
3. Positioning;
4. Care of adaptive personal care devices; and
5. Feminine hygiene.

"Personal guidance" means the assistance provided to a person with head injury in activities of daily living and/or personal care because he or she routinely requires help completing such activities of daily living and/or cannot direct someone to complete such activities when physical handicaps prevent self completion; or there is a documented health or mental health problem requiring supervision of the person for the protection of the person or others.

"Physical therapist" means a person who is a graduate of a physical therapy education program that has been approved by a nationally recognized accrediting body or who has the documented equivalent education and meets current legal requirements of licensure as a physical therapist.

"Placing agency" means the person or corporation that is responsible for selecting a program.

"Plan of correction" means a written response outlining actions taken or to be taken to address deficiencies cited in a licensing inspection report.

"Post acute" means the provision of on-going, goal-oriented services without the need for the 24-hour physician care.

"Process" means activities that are systematically and intentionally linked in order to produce a service.

"Program description" means a document submitted to obtain a license and/or funding from the Department. A program description includes a detailed description of services provided to persons with head injury and staff coverage, and is reviewed as part of the licensing inspection process. The program description shall be amended to reflect major changes in the provision of services.

"Protecting rights" means ensuring that the rights of a person served are not ignored or infringed upon. This affirmation and protection is reflected in all aspects of the service process, from service initiation to discharge and follow up.

"Provisional license" is a negative licensing action issued to prompt corrective actions in existing community residences. A provisional license shall be effective for less than one year.

"Reasonable accommodation" means a modification or adjustment that assists the person served to access benefits and privileges that are equal to those that are available to other citizens. Examples taken from the Americans with Disabilities Act 42 U.S.C. 12101 et seq. (ADA) include: making existing facilities readily accessible to and usable by people with disabilities; restructuring jobs; modifying work schedules; reassigning people to vacant positions; acquiring or modifying equipment or assistive devices; adjusting or modifying examinations, training materials, policies, and procedures; and providing qualified readers or interpreters.

"Regional Assistant Director's Office" means a component of the Division of Developmental Disabilities which provides administrative oversight for the provision of

supportive services to persons with disabilities. Geographic regions and locations of such offices are as follows:

1. Northern Region and Upper Central Region

c/o Greenbrook Regional Center

275 Greenbrook Road

Green Brook, NJ 08812

2. Lower Central Region

Capital Center

50 East State Street

PO Box 726

Trenton, NJ 08625-0726

3. Southern Region

101 Haddon Avenue Suite 17

Camden, NJ 08103-1485

"Rehabilitation/habilitation" means the process of providing those comprehensive services deemed appropriate to the needs of a person with a head injury in a coordinated manner in a program designed to achieve objectives of improved health, welfare, and the realization of the person's maximum physical, cognitive, social, psychological and vocational potential.

1. Rehabilitation services are necessary when the person with a head injury is in need of assistance in order to reacquire skills and it is beyond the person's personal capacities and resources to achieve his or her maximum potential for personal, cognitive, social, and economic adjustment and beyond the services available in the person's usual daily experience.

2. Habilitation is closely related to and is conceptually and programmatically a part of rehabilitation. The range of functional goals is the same as the range of services that shall be provided for the person to attain the goals. The chief difference is the condition or nature of the person served. Habilitation refers to the process that involves persons served who need to acquire particular skills and/or functional abilities they did not possess previously, such as independent living skills or vocational skills, while rehabilitation refers to the process that involves persons served who need to re-acquire or maximize lost skills and/or functional abilities.

"Rehabilitation nurse" means a person who meets legal requirements as a registered nurse and who has training and experience in dealing with the unique needs of those persons served who need rehabilitation. Rehabilitation nursing is a specialty practice within the profession. Rehabilitation nurses diagnose and treat the human responses of persons and groups to actual or potential disabilities that interrupt or alter their functioning and life satisfaction. The goal of rehabilitation nursing is to assist the person or group in the restoration and maintenance of maximal health and improve the person's quality of life. One mechanism of ascertaining the knowledge of rehabilitation nursing is through certification as a certified rehabilitation nurse (C.R.R.N.).

"Rehabilitative treatment environment" means a rehabilitation setting that provides for:

1. The provision of a range of choices, with personal preference, self-determination and dignity of risk receiving full respect and consideration;
2. A variety of social interactions that promote community integration;
3. An environment of peer support and mentorship;
4. Professional team involvement and competence; and

5. A physical environment conducive to enhancing the functional abilities of the persons served.

"Relocate" means providing accommodations which enable a person to evacuate the premises within three minutes, if prior accommodations could not be evacuated by the person within three minutes.

"Residence" means a community residence for persons with head injuries.

"Respite placement" means a service in which a licensee provides short term supports for a person with head injury.

"Restriction of rights" means any externally imposed limitation of rights.

"Self-advocacy group" means a group of persons with head injury who meet on a regular basis (such as at house meetings) to discuss common goals, issues, needs and wishes. With the assistance of a facilitator, if needed, a self-advocacy group can serve as a united voice for persons with head injury.

"Special Response Unit" (SRU) means that component of the Department responsible to investigate serious unusual incidents in community programs contracted by the Division and/or licensed and regulated by the Department.

"Staff member" means a person who is directly employed by an agency that serves people with head injuries on either a full or part-time basis.

"Substantial non-compliance" means:

1. The violation by an owner, applicant, licensee or executive leadership of the laws of the State of New Jersey pertaining to or governing community residences for persons with head injury;

2. One or more licensing requirements have been left unmet and the unmet licensing requirements directly endanger the health, safety, or well-being of a person served;
3. The owner, applicant, licensee or executive leadership refuses to cooperate with Department personnel in gaining admission to a residence or in conducting an investigation or inspection;
4. The owner, applicant, licensee or executive leadership has failed to adhere to the approved program description;
5. The owner, applicant, licensee or executive leadership has falsified any information in order to obtain a license;
6. The owner, applicant, licensee or executive leadership has refused to furnish the Department with files, reports, or records as required by this chapter; or
7. The owner, applicant, licensee or executive leadership has failed to act in a fiduciary capacity in order to protect the funds of persons served.

"Supervised apartments" means apartments that are occupied by persons served and leased or owned by the licensee. Staff provide supervision, guidance, and training as needed in activities of daily living as defined by the needs and targeted future goals of the person served, in accordance with the requirements of this chapter.

"Support" means activities, materials, equipment or other services designed and implemented to assist the person served. Examples include, but are not limited to, instruction, training, assistive technology, and/or removal of architectural barriers. Support also includes positive interactions between the person served and person(s) significant to the person served.

"Supported living" means a living arrangement in which a highly flexible array of services and supports are provided in a variety of settings.

"Transdisciplinary Team" (TDT) means an individually constituted group responsible for the development of a single, integrated ITP. The TDT consists of the person served, the legal guardian, the parents or family member (if the adult desires that the parent or family member be present), those persons who work most directly with the person served, and professionals and representatives of service areas who are relevant to the identification of the person's needs and the design and evaluation of programs to meet them.

"Traumatic brain injury" means an acquired injury to the brain. Such term does not include brain dysfunction caused by congenital or degenerative disorders, nor birth trauma, but may include brain injuries caused by anoxia due to trauma.

"Uniform Construction Code" means N.J.S.A. 52:27D-119 et seq. and N.J.A.C. 5:23.

"Uniform Fire Safety Act" means N.J.S.A. 52:27D-192 et seq., and the related codes adopted pursuant thereto.

"Unusual incident" means an event involving a person served or employee involving indications or allegations of criminal actions, injury, negligence, exploitation, abuse, clinical mismanagement or medical malpractice, a major unforeseen event, for example, serious fire, explosion, power failure that presents a significant danger to the safety or well being of persons served, and/or employees; or a newsworthy incident.

"Variance" means written recognition by the Department that the licensee has complied with the intent of a standard in a Department-approved alternative manner, in accordance with N.J.A.C. 10:44C-1.10.

"Volunteer" means an unpaid person who supports and supplements programs and services. A volunteer may be an individual, or a member of an organized group.

"Waiver" means the temporary suspension of a standard that is granted in writing by the licensing agency.

"Willful non-compliance" means that action or non-action of an applicant or licensee who has knowledge of the violations of licensing rules and/or terms of the license, has been advised of the consequences of not achieving compliance and has not achieved compliance after being given an adequate opportunity to do so.

10:44C-1.4 Application for a license

- (a) An application for a license may be obtained from:

Department of Human Services

Office of Licensing and Inspections

50 East State Street

PO Box 726

Trenton, NJ 08625-0726

(b) Except as otherwise provided in the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A: 168A-1 et seq., no license shall be issued to any applicant or licensee who has been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, crimes against the person, crimes involving a controlled dangerous substance or other like offenses.

1. No license shall be issued to any applicant or licensee who has been convicted of a crime of moral turpitude.

2. No license shall be issued to any applicant or licensee who has been adjudged civilly or criminally liable for abuse of a person served by the Department or placed in a community residence regulated by this chapter.

(c) An application for licensure as an operator of a community residence for persons with head injury shall be submitted to the licensing agency.

1. The application shall be composed of the following:

i. Identification of all owners;

ii. A table of organization;

iii. A curriculum vitae for the applicant and executive leadership;

iv. Documentation that the applicant meets the requirements of (b) below;

v. A description of the applicant's experience in providing services to persons with head injury;

vi. Documentation that the business is incorporated or otherwise authorized to do business in the State of New Jersey;

vii. A list of the members of the governing body (for example, board of directors/trustees), their occupations, addresses and telephone numbers;

viii. At least three references; and

ix. The program description.

2. Licensees currently operating community residences for persons with head injuries in New Jersey shall be required only to provide any changes in (c)1 above, as part of the application process.

3. Applicants shall document on the application whether they will accept Division placements and/or seek Division funding.

(d) The licensing agency shall initially review the materials to determine:

1. Whether all required elements have been submitted;
2. The applicant's qualifications;
3. The applicant's apparent ability to comply with this chapter;
4. The applicant's apparent ability to deliver services in accordance with its stated

goals and purposes; and

5. Potential barriers to licensing.

(e) The licensing agency may employ the services of any qualified professional, as necessary, in the review process in order to conduct a thorough and valid review of the program, supports and services to be rendered.

(f) Within 60 calendar days of the receipt of the completed application, the applicant shall be advised in writing of its approval or non-approval.

(g) Upon a determination that an application is denied, the licensing agency shall notify the applicant in writing of the reason through certified mail, return receipt requested.

1. The applicant may submit a new application after six months.

(h) The approved program description shall be available for review, as appropriate, by persons with head injury, their guardians, their families and their advocates.

(i) The licensee shall be responsible for the overall operation of each community residence for persons with head injuries, including the arrangement whereby executive leadership is delegated to a person who is employed to oversee the day-to-day operation.

(j) No license shall be issued to any person who has previously been denied a license by any State agency due to substantial noncompliance or due to violation of any state or Federal law pertaining to the operation of a community residential facility.

(k) No license shall be issued to, or held by any person who, in a final determination by a court of record or by the Division on Civil Rights, has been found to discriminate against any person on the basis of race, color, creed, gender, national origin, ancestry or disability.

(l) No person shall own or operate a community residence for persons with head injuries without authorization from the licensing agency.

(m) Each community residence for persons with head injuries shall be subject to inspection or investigation by the Department as deemed necessary without limitation or notice to allow for an inquiry into the facility's records, equipment, sanitary conditions, accommodations and management of the persons served.

(n) The licensee or applicant shall pay an initial application fee of \$1,000 for the first residence to be opened. The fee shall not apply to any residence opened prior to (the effective date of this rule).

1. The licensee shall pay a fee of \$500.00 for each additional residence that requires a program description review.

2. The licensee shall pay a renewal fee of \$250.00 for each group home or supervised apartment program.

4. The licensee shall pay a renewal fee of \$100.00 for each Supported Living Program.

10:44C-1.5 Procedure manual

Prior to opening an initial residence, an applicant shall submit a procedure manual, which meets the requirements of N.J.A.C. 10:44C-2.2, to the licensing agency for approval.

10:44C-1.6 Issuance of an initial license

(a) Upon approval of the program description, and upon approval of the licensee's policy and procedure manual, the licensing agency shall conduct an on-site initial inspection of the residence.

(b) Prior to the issuance of an initial license, the following, at a minimum, shall be available:

1. Documentation which demonstrates compliance with all certificate of occupancy (CO) requirements, including any required inspection by the Fire Official and registration with the Department of Community Affairs;

2. A fire evacuation plan;

3. A first aid kit that meets the requirements of N.J.A.C. 10:44C-5.1(g);

4. Functioning utilities, including an operable telephone;

5. If the building is not serviced by a public water supply, written approval from the local health department that the water supply is safe for human consumption;

6. Furniture and food for each person served;

7. A staff schedule that conforms to the program description approved by the licensing agency in accordance with N.J.A.C. 10:44C-1.4;

8. A copy of the deed or lease; and

9. Documentation that all necessary residential and vehicle insurance is in force.

(c) The license shall document the location of each residence and shall specify the maximum number of persons with head injury that may occupy the residence, excluding licensee's staff.

1. A room or rooms may be used as an office for exclusive use by staff.

i. Such rooms shall not be utilized for sleeping purposes for any person served, staff member or any other person unless temporary approval is granted by the licensing agency due to an emergent problem.

ii. Any room identified as office space shall not be included in determining the capacity of the home.

2. A room may be utilized exclusively by staff for sleeping purposes as part of the staff coverage plan, if previously approved by the licensing agency.

(d) The Department shall issue a full license, which is not transferable to any other person, corporation, agency or address, effective from the date of the on-site inspection, upon compliance with (a) and (b) above.

1. The applicant or licensee shall submit a plan of correction regarding all deficiencies cited in the inspection report within thirty (30) days after notification to the applicant or licensee.

(e) If licensure is not approved, an applicant or licensee shall submit a plan of correction regarding all deficiencies cited in the inspection report within 30 days after notification to the applicant or licensee.

1. Following receipt of the plan of correction, the licensing agency shall conduct an on-site review to verify the corrective action taken.

10:44C-1.7 Renewal of a license

(a) Upon reinspection, full licenses shall be effective for up to one year from the expiration date of the preceding license, unless otherwise specified by the licensing agency by

the issuance of a provisional license, a non-renewal of license, suspension of license or revocation of license.

1. The licensee shall submit a plan of correction regarding all deficiencies cited in the reinspection report within 30 days or in accordance with a shorter time frame as established by the licensing agency.

2. A shorter time frame shall be established by the licensing agency in those instances where prompt remediation of a deficiency is required in order to protect the health, safety, welfare and rights of persons served.

(b) Following receipt of the plan of correction, the Department may conduct an on-site review to verify the corrective action taken.

1. Following an on-site review, the findings of the Department regarding the licensee's plan of correction shall be provided to the licensee. These findings shall indicate that each deficiency is corrected, partially corrected, not corrected, or further review is required by the licensing agency.

i. Should there be continuing deficiencies, or if new deficiencies are noted which document substantial or willful noncompliance, the findings shall indicate that a second plan of correction is required or that the licensing agency may impose a negative licensing action.

(c) If a second plan of correction is required by the licensing agency, the licensee shall submit the plan of correction within the time frame specified by the licensing agency.

(d) Following receipt of the second plan of correction, the Department may conduct an on-site review to verify the corrective action taken.

1. Subsequent to an on-site review, the findings of the Department regarding the licensee's second plan of correction shall be provided to the licensee. These findings shall indicate whether or not each deficiency is corrected.

i. Should there be continuing deficiencies which the licensee has stated in the plan of correction have been corrected, or if other deficiencies are noted which jeopardize the health, safety, welfare and rights of the persons served, or which document substantial or willful noncompliance, the licensing agency shall impose a negative licensing action.

10:44C-1.8 Denial, revocation, non-renewal or suspension of a license

(a) The licensing agency may deny, revoke, refuse to renew or suspend a license for substantial non-compliance or for willful non-compliance.

(b) If the licensing agency denies, revokes or refuses to renew a license, the licensee shall be prohibited from re-applying for a license for one year from the date of license revocation or non-renewal. After the one year period has elapsed, the licensee may submit to the licensing agency a new application for a license.

1. When a negative licensing action is based upon falsification, willful noncompliance, criminal activity by the applicant, licensee or executive leadership, or when persons have suffered physical injury or emotional harm or distress due to the applicant's, licensee's or executive leadership's actions or failure to act, the Department may refuse to accept any subsequent application.

(c) When a license is suspended, the licensing agency shall reinstate the license when the licensee achieves compliance with the provisions of this chapter. The licensing agency shall

not require the licensee to submit a new application for a license unless such application is expressly made a condition of the reinstatement of the license.

(d) Each license issued to a licensee shall remain the property of the Department of Human Services. If the licensing agency suspends or revokes a license, the licensee shall, upon notification, return the license to the licensing agency.

(e) The Department of Human Services may revoke or suspend a license whenever a licensee or the licensee's executive leadership is found to be violating any State or Federal Law pertaining to the operation of a community residence for persons with head injuries or whenever such residence shall fail to comply with specific standards established by the Department.

10:44C-1.9 Administrative hearings

(a) Upon imposition of a negative licensing action, the licensee shall have the opportunity to request an administrative hearing pursuant to N.J.A.C. 10:48-1.

(b) In the event of the imposition of a non-renewal, suspension or revocation, if the Department determines that persons served are not at risk and that no imminent danger(s) exist(s), the Department may permit a residence, operated by a licensee who has requested an administrative hearing as specified in (a) above, to continue to operate until a final decision is rendered as a result of the hearing.

(c) If it is determined that the occupants of a residence are at risk, the Department shall take necessary action to assure that the risk is eliminated, including, but not limited to:

1. Removing the persons served from the residence; or
2. Placing staff approved by the Department at the residence to ensure the safety of the persons served.

10:44C-1.10 Waiver or variance

(a) A waiver or variance shall be granted by the licensing agency provided that such a waiver or variance would present no danger to the health, safety, welfare or rights of the persons served.

1. The licensee shall request the waiver with substantial detail justifying the request.
2. Issuance of a waiver or variance shall be limited to the following circumstances:
 - i. Where enforcement of the standard would result in unreasonable hardship on the residence; or
 - ii. Where the waiver or variance is in accordance with the particular needs of the persons with head injury.

10:44C-1.11 Complaints

(a) The Department shall have the authority to investigate any complaint received regarding a licensee.

1. The licensee shall cooperate with the Department in any investigation.

10:44C-1.12 Voluntary closure

(a) A licensee shall give at least 60 days notice to the licensing agency of any planned closure.

1. Such notice shall indicate that a plan is in place for transfer or discharge that complies with the provisions of N.J.A.C. 10:44C-4.4.

10:44C-1.13 Licensing agency

(a) The licensing agency shall enforce this chapter upon the authority delegated by the Commissioner of the Department of Human Services.

1. Pursuant to N.J.S.A. 30:1-12(c) the Commissioner shall have the authority to issue subpoenas to compel testimony and the production of documents.

(b) The licensing agency may utilize the findings of any State, county or municipal official empowered by statute or appropriately constituted ordinance, for example local construction officials or fire officials, to inspect community residences.

(c) The licensing agency may utilize the findings of any agency or agent that monitors the residence for the funding source or that provides case management as required by the Medicaid Waiver.

1. The licensing agency may impose a negative licensing action based upon an SRU investigation report.

(d) The licensing agency may contact parents, relatives, legal guardians and others interested in the care and rehabilitation of those persons served in community residences for persons with head injuries to obtain facts and opinions regarding their satisfaction with the services rendered by the licensee.

1. Evidence obtained from such parties may be utilized as part of the licensing decision.

(e) The licensing agency may utilize the findings of an accrediting body to render a licensing decision.

1. Accrediting reports shall not be utilized as the sole decision criterion.

10:44C-1.14 Illegal operations

(a) In cooperation with the Department of Community Affairs and the Department of Health and Senior Services, the licensing agency shall investigate any community-based residence alleged to be operating without a license as required by N.J.S.A. 30:11B-1 et seq., N.J.S.A. 55:13B-1 et seq., the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., or any other law pertaining to the licensing of community based residential programs, as subsequently adopted into State law.

(b) The specific responsibilities of all parties to investigate complaints of an illegal operation shall be agreed upon among the authorities empowered to license community-based residences, based on the information pertaining to each case.

(c) Subsequent to inspection, joint or independent actions shall be taken as deemed necessary to suppress illegal operations.

1. Actions shall be taken to prevent an applicant from obtaining a license from any State licensing agency when the sole purpose for obtaining that license is to avoid sanctions previously initiated by a State licensing agency exercising legal jurisdiction.

2. One or more of the following actions shall be taken when it is determined that imminent danger is present:

- i. Persons served shall be removed from the residence;
- ii. Staff approved by the Department shall be placed at the residence to ensure the safety of the persons served; and/or
- iii. The cause of the imminent danger shall be removed.

10:44C-1.15 Search warrants

(a) In the event that any authorized representative of the licensing agency is denied access to any residence, the licensing agency shall obtain a search warrant from a court of competent jurisdiction.

1. The application for the search warrant shall state that access to the premises is required to enforce N.J.S.A. 30:11B-1 et seq.

2. The application for the search warrant shall specify one of the following:

i. The desired inspection is a regular inspection required as part of the normal process of renewal of a license; or

ii. The desired inspection is a special inspection in response to information received by the licensing agency indicating the possible existence of a condition that violates N.J.S.A. 30:11B-1 et seq. or this chapter.

SUBCHAPTER 2 ORGANIZATION AND ADMINISTRATION

10:44C-2.1 General requirements

(a) The purposes of the licensee's organization and a description of the services that it provides shall be made available to persons served, parents, guardians, advocates and the general public. This document shall describe, in general terms, who is served, the services provided and the goals of the licensee's organization.

(b) The licensee shall keep the following on file:

1. A record of all admissions and discharges, including names and dates, for the previous 24 month period;

2. A current copy of this chapter;

3. Copies of all current licenses; and

4. Written descriptions of any religious practices or restrictions that are observed if a licensee has a particular religious orientation, approved as part of the program description, in accordance with this chapter.

(c) A licensee having non-profit status in accordance with 26 U.S.C. §501(c)(3) shall have a board of trustees which meets the following criteria:

1. A minimum of five persons shall comprise the board;

2. Provisions shall exist for the orientation of new board members; and

3. Meetings shall be held with a frequency sufficient to discharge their responsibilities effectively; in no event shall the full governing body meet less than three times a year.

(d) A for-profit agency may employ a board of directors provided it meets the requirements contained in this chapter.

(e) When a board of directors is identified, there shall be:

1. Procedures for the orientation of new members to the operations of the organization;

2. Policies to guard against the development of a conflict of interest between a member of the board and the organization;

3. An explanation of the board's committee structure, if any, including such subordinate groups as may be employed to carry out the board's responsibilities;

4. Documentation that board meetings are held at least three times a year;

i. Minutes shall be kept of each meeting and shall be available for review.

5. Provisions to assure the inclusion of persons served on the board.

(f) Members of a board of directors shall be informed as to whether liability insurance is provided to directors and officers for errors and omissions.

(g) The organization shall operate on an annual budget. The budget shall:

1. Reflect and anticipate the organization's needs and resources for realizing its goals;

2. Reflect input from personnel concerning the need for and selection of equipment, modification of facilities used in the conduct of the programs, and staffing requirements;

3. Be approved by the licensee prior to the initiation of the new fiscal year and at the time major budgetary modifications are made to adapt to unanticipated factors;

i. If the licensee employs a business manager, the business manager shall make a budget recommendation;

4. Be used during that fiscal year to assess the accomplishment of budgetary goals; and

5. Be reviewed periodically by the governing authority (ies) to compare the budget, as formulated or revised, with the actual income and expenditures as a means of measuring ongoing performance.

(h) An independent examination of the organization's financial status shall be obtained from a certified public accountant each year, and be available for review. The scope of this independent review will vary based on the accountability requirements to which the organization is subject. This independent review may range from a compilation report to a full audit.

(i) Fiscal records, including payroll, purchasing, and financial statements, shall be maintained.

(j) Cash management policies shall be developed which include:

1. A policy on the investment of funds;
2. A plan to meet working capital and contingency needs; and
3. A written system of cash control.

(k) When fees for services are charged, the organization shall have an established schedule of fees that is:

1. Available in printed form; and
2. Applied equitably to each person served.

(l) The organization shall develop a policy that prohibits fee splitting with other agencies or persons as consideration for referral of the person served.

(m) The organization shall have a comprehensive insurance program that:

1. Adequately protects all assets and compensates staff members, trainees/interns, volunteers, members of the board of directors, if applicable, persons served, and the public for reasonable claims due to adverse events for which the organization is liable;

2. Is reviewed at least annually to evaluate the organization's needs for insurance and the types of protection available;

3. Includes coverage for building(s), equipment and inventory, workers' compensation, and bonding of appropriate personnel;

4. Considers the organization's needs and responsibilities regarding malpractice liability insurance, product and service liability insurance, and directors' and officers' errors and omissions insurance; and

5. Provides vehicle insurance coverage at a level appropriate to the purpose(s) for which vehicles are used.

(n) Licensees that provide alcohol and other drug programs shall assure that the services provided in those programs comply with N.J.A.C. 8:43A.

(o) Licensees that provide outpatient mental health programs shall assure that the services provided in those programs comply with N.J.A.C. 10:37-10.

10:44C-2.2 Development and maintenance of procedure manual

(a) The licensee shall develop and implement a manual of written procedures to ensure that the service delivery system complies with State law and rules governing community residences for persons with head injury.

1. The procedures shall be reviewed annually and revised as necessary.

2. Each procedure shall be designed in accordance with the principles of affirming and protecting rights of persons served within a rehabilitative treatment environment, and shall be consistent with the organizational structure and management philosophy of the licensee.

3. While specific content for inclusion in a procedure shall be identified on an as-needed basis in this chapter, to ensure consistency, each procedure shall include:

i. A descriptive title which is unique so as to permit easy reference and retrieval of each document;

ii. An explanation regarding the purpose of the document;

iii. A description of sequential steps required to successfully complete a task or action;

iv. Assignment of staff responsibilities at each step in the implementation; and

v. Reporting and recording requirements for each person involved.

(b) The licensee shall maintain a procedure manual containing the following documents and/or procedures:

1. A statement of philosophy, values and goals so as to govern the organization's direction and character;

2. A table of organization that illustrates lines of authority, responsibility and communication;

3. Administrative policies and procedures identified at N.J.A.C. 10:44C-2.1, including:

i. Procedures for the orientation of new members to the operations of the organization;

ii. Policies to guard against the development of a conflict of interest between a member of the board and organization;

iii. A policy on the investment of funds; and

iv. A policy that prohibits fee splitting with other agencies or persons as consideration for referral of the person served.

4. A procedure for implementing a plan to deal with major emergencies requiring evacuation from the residence, including, but not limited to, a fire or a gas leak;

5. A procedure for handling medical emergencies;

6. A procedure for reporting all unusual incidents;

7. A procedure for the reporting of suspected abuse, neglect or exploitation of the persons served, including, at a minimum:

i. A written statement expressly prohibiting abuse, neglect or exploitation;

ii. A written statement regarding the obligation to report each allegation as required by N.J.S.A. 9:6-8.10, N.J.S.A. 52-27G-1 et seq.; and

iii. A written statement regarding specific agency investigation procedures.

8. A procedure to ensure sound fiscal management of the funds of a person served;

9. A procedure for resolving complaints and grievances of persons served or decisions of the TDT, which shall have the following:

i. A minimum of two levels of appeal, the last of which shall involve the executive leadership or the licensee;

ii. Time frames for decision-making at each step;

iii. Written notification procedures;

iv. The rights and responsibilities of each party; and

v. The opportunity for the person served, his or her guardian or his or her personal advocate to obtain assistance from any of the individuals or organizations listed at N.J.A.C. 10:44C-3.1(b)2.

10. A procedure for internal communication including, but not limited to, the following:

i. A log to document only critical information, and the necessary follow-up action taken, which shall be dated and shall include the full name and title of the person making the entry; and

ii. A staff communication log, which shall be dated and shall include the full name and title of the person making the entry.

11. A procedure for admissions, including admission criteria, changes in supports or services, the development, implementation, review and evaluation of each person's treatment plan and transfers and discharges that complies with the requirements of N.J.A.C. 10:44C-4;

12. A statement regarding maintaining confidentiality of persons served and records as required by N.J.A.C. 10:41-2;

13. Written procedures for medication administration, including procedures for self-medication;

14. A written policy governing the use of psychotropic medication; and

15. A continuous quality improvement system to identify opportunities to improve services and/or supports and to resolve identified problems. The system shall include, at a minimum:

i. A written plan to identify how data is collected, analyzed and utilized to determine patterns which identify process or systemic problems requiring further in-depth review;

ii. Input from a variety of sources, including persons served, family members and others;

iii. A written summary of satisfaction surveys;

iv. A written summary of outcomes assessments; and

v. An action plan based upon an analysis of (b)14i through iv above; and

16. Cash management policies as stipulated at N.J.A.C. 10:44C-2.1(j).

10:44C-2.3 Implementation of procedure manual

(a) The procedure manual shall be available and accessible for staff use.

(b) The licensee shall assure that staff implement policies and procedures for which they are responsible.

(c) All staff shall be able to describe procedures that they routinely implement.

(d) The procedure manual shall be available for review by authorized representatives of the Department.

10:44C-2.4 Personnel

(a) Personnel practices shall comply with all applicable Federal, State and local laws, ordinances, rules and regulations pertaining to employment, including civil rights, retirement plans or social security, minimum wages, hours and worker's compensation.

(b) Except as otherwise provided in the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1 et seq., no licensee shall employ any person who has been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, crimes against the person, crimes involving controlled dangerous substances or other like offenses.

1. A licensee shall not employ any person who has been convicted of a crime of moral turpitude.

2. A licensee shall not employ any person who has been adjudged civilly or criminally liable for abuse of a person served by the Department or placed in a community residence regulated by this chapter.

(c) Prior to hiring any staff member or utilizing a volunteer who provides services to persons served on a planned basis, the licensee shall secure and maintain:

1. A signed application for employment from each applicant, indicating the applicant's name, address and telephone number, education and disclosure of the presence or absence of criminal convictions;

2. A minimum of two documented references;

i. The licensee shall check a minimum of two most recent work references or, if not available, a minimum of two personal references.

ii. The licensee shall document all reference checks and maintain such reference checks in the applicant's personnel record.

iii. The staff person conducting the reference check shall sign and date the reference check.

3. A current job description which, at a minimum, shall include the following:

i. A position statement that documents overall job responsibilities, including the requirement that the employee cooperate with the licensee and Department staff in any inspection or investigation;

ii. A list of specific duties;

iii. The minimum qualifications;

iv. The positions supervised, if applicable; and

v. The reporting supervisor, who shall be a staff member.

(d) The licensee shall conduct a criminal background check for each applicant and each current staff member.

1. The licensee may employ the applicant or staff member for not more than six months, pending the results of the criminal background check, providing the applicant or staff

member submits a sworn statement to the licensee attesting that he or she has not been convicted of any offenses enumerated in N.J.A.C. 10:44C-2.4(b).

(e) Upon employment, direct service staff shall submit a written statement from a licensed physician or advance practice nurse indicating that he or she is in good health. Such statement shall be based on a medical examination conducted within the six months immediately preceding the direct service staff's starting date with the licensee.

(f) Within one year prior to or upon beginning work and annually thereafter, each direct service staff member shall take a Mantoux tuberculin skin test with five tuberculin units (TU) of PPD tuberculin.

1. The direct service staff member shall submit to the licensee written documentation of the results of any testing or certification.

2. If the direct service staff member has had a previous positive Mantoux tuberculin skin test, or if the Mantoux tuberculin skin test is significant (10 or more millimeters (mm) of induration), the staff member shall submit to the licensee a statement from his or her physician or advance practice nurse certifying that he or she poses no threat of tuberculosis contagion before he or she is allowed to come in contact with persons served and other staff.

3. If the Mantoux tuberculin skin test is insignificant (zero to nine mm of induration), no further testing shall be required.

i. The licensing agency or the licensee may, at any time, require a direct service staff member to retake the Mantoux tuberculin skin test, if there is a reason to believe or suspect that the staff member may have contracted tuberculosis or if the State Department of Health and Senior Services recommends re-testing.

4. The licensee shall prohibit any direct service staff member who fails to submit satisfactory results from a medical practitioner from having contact with persons served or other staff.

(g) The licensee shall maintain on file the following for all direct service staff:

1. Mantoux tuberculin skin test results, chest x-ray or physician's or advance practice nurse's certification; and

2. The results of a physical examination that clearly indicates that the staff person is capable of performing the duties required.

(h) The roles and responsibilities of volunteers, consultants, and trainees/interns shall be described in writing.

(i) The nature and extent of the actual involvement of persons utilized through consultation and affiliation arrangements shall be documented and shall meet the organizational and legal requirements associated with the particular profession.

(j) Personnel and other records shall contain, at a minimum:

1. Application for employment;
2. Credentials verification, if applicable;
3. Evidence of current licensure or certification, if applicable;
4. Reports of performance evaluations;
5. Authorizations for deductions;
6. Information on the benefits program;
7. Records of salary and position changes;
8. Results of the criminal background check;
9. Orientation and training records; and

10. Other information required by law or the licensee's policy.

10:44C-2.5 Minimum staff qualifications

(a) The licensee or executive leadership shall demonstrate knowledge in the design and supervision of traumatic brain injury programs, development of professional staff, application of fiscal and qualitative standards, and responsiveness to customers and the marketplace and shall meet the following educational or experience qualifications:

1. An advanced degree in healthcare management or related clinical field; or
2. Five years' progressive management experience, at least two at a senior staff level, may be substituted.

(b) A licensee choosing to employ an executive leadership to assist in the management of community residences for persons with head injuries shall provide a written statement signed and dated by the licensee and the executive leadership that documents the following:

1. The executive leadership's working relationship to the licensee and the executive leadership's designated authority and duties;
2. The official delegation to the executive leadership of the authority and responsibility necessary to direct the organization in accordance with policy; and
3. The goals established for the executive leadership with his or her agreement.
 - i. The licensee shall maintain on file an annual documented evaluation of the executive leadership's performance based on the agreed-upon goals.

(c) A person serving as a Business Manager shall meet the following educational and/or experience qualifications:

1. A bachelor's degree in business or a related field; and/or
2. Experience which results in a working knowledge of principles and practices of business administration, budget and purchasing practices, and principles of personnel management.

(d) An agency employee serving as a case manager shall:

1. Have one of the following:
 - i. a bachelor or masters degree in social work;
 - ii. a bachelor of science in nursing (BSN);
 - iii. certification as a rehabilitation counselor (CRC); or
 - iv. certification as an insurance rehabilitation specialist (CIRC).
2. Effectively communicate with a variety of persons including the patient and family, payor-customer, physician, advance practice nurse, community agencies, members of the TDT, etc.;
3. Demonstrate the ability to lead the TDT in order to achieve clearly defined goals, objectives and responsibilities;
4. Demonstrate the ability to effectively communicate both verbally and in writing; and
5. Demonstrate the ability to develop effective treatment plans.

(e) The supervisor responsible for the operation of a residence shall have a high school diploma or equivalent and one year of experience working with persons with head injury.

(f) Direct service staff shall be at least 18 years of age and shall have a high school diploma or equivalent.

(g) Direct service staff shall have the ability to communicate with the persons served with whom they are working.

(h) Direct service staff shall be capable of providing any direct assistance required by persons served with whom they are working.

(i) The licensee shall verify that all persons providing a professional service, including, but not limited to, a Clinical Director, either through direct employment or contract, possess credentials required by Federal and State law.

(j) The nature and extent of the actual involvement of persons utilized through consultation and affiliation arrangements shall be documented and shall meet the organizational and legal requirements associated with the particular profession.

(k) Standards of qualification for all other staff members, consultants, trainees/interns, and volunteers shall be established and maintained as follows:

1. Basic qualifications for all other professional personnel shall be considered and approved by the licensee upon recommendation by the executive leadership;

2. All personnel shall meet the legal requirements of their positions;

3. When recognized professional groups have established standards of qualification, those standards shall be adopted as minimum requirements for the members of the licensee's professional staff;

4. When a professional group has not established standards of qualification, the agency shall establish reasonable qualifications;

5. Contractual or consultant services shall meet the standards of qualification established by the respective professional group, by applicable legal requirements, and by such additional evidence of competence as the agency may require;

6. Trainees and interns shall be supervised by staff members and shall have the qualifications required for their assignments.

i. Information regarding any personal risks, liabilities, and insurance coverage shall be clearly communicated to the trainee or intern and, when appropriate, to the affiliating academic or training program.; and

7. Support personnel or technical assistants shall be supervised, shall have specified job duties, and shall function within the goals established by the licensee.

10:44C-2.6 Orientation

(a) Prior to working with persons served, all staff shall receive an orientation to acquaint them with:

1. The organization's philosophy, goals, services and practices;
2. The prevention of abuse, neglect and exploitation;
3. Unusual incident reporting and investigating procedures;
4. Emergency procedures as identified in the procedure manual; for example, the fire evacuation plan, emergency medical treatment, use of fire extinguishers;
5. An overview of head injury and any special needs of the persons served, for example, medical or behavioral problems requiring specific, tailored training; and
6. The appropriate job description and the personnel policies of the organization.

(b) Records of the orientation provided shall include a dated, signed acknowledgment by the employee receiving and the person(s) providing the orientation.

10:44C-2.7 Staff training

(a) Basic staff training programs shall either be offered by the Department, or provided by the licensee after obtaining approval from the Department, to ensure staff competency. Within 120 days of employment, each employee shall successfully complete training approved by the licensing agency that shall address, at a minimum:

1. Overview of head injury;
2. Medication training;
3. Preventing abuse and neglect;
4. American Red Cross Standard First Aid Training (and have a valid certificate on file); and
5. Cardio-pulmonary resuscitation training (and have a valid certificate on file).

(b) Staff shall receive training in all policies and procedures not covered during orientation which are relevant to the employee's job within 60 days of hire.

(c) Specialized training programs, identified as necessary during the application process or, subsequently, by the TDT, shall include, but not be limited to:

1. Specialized feeding techniques;
 - i. Feeding tube responsibilities shall be delegated to nursing personnel.
2. Mobility procedures and the safe use of mobility devices;
3. Seizure disorders, physical disabilities or other identified medical needs; and
4. Identified mental health needs, including the need for behavior modification.

(d) All staff who work with persons served who have specialized needs shall receive training in such specialized training programs.

1. Only staff who demonstrate competency in the provision of services to persons with specialized needs shall provide those services.

(e) Training records shall be maintained in the administrative offices and shall contain the following:

1. A curriculum describing the courses or topics offered and a training plan addressing how the content of each course or topic will be delivered;
2. Documentation of attendance through a report that includes the dated signatures of the trainer and the trainee; and
3. Results of all training programs.

(f) The licensee may conduct, at its discretion, and without specific prior approval from the Division, training programs in addition to training required by this chapter.

10:44C-2.8 Staff coverage

(a) A description of the staff coverage and the staff schedule shall be initially approved as part of the program description, reviewed at each inspection, and shall specify:

1. The on-site coverage; and
2. The emergency coverage and access procedures in instances where on-site coverage is not necessary.

(b) Reduction of staff coverage as specified in any modification to the program description shall be justified in writing and sent to the licensing agency and the appropriate Regional Assistant Director's Office, if necessary, for approval.

1. Documented approval(s) by the TDT that a person or persons served can be left alone for specific amounts of time shall be submitted as evidence justifying modification of staff coverage.

2. Reduction of staff coverage as specified in the approved Program Description shall be jointly reviewed and approved by the Regional Assistant Director's Office (if necessary) and the licensing agency prior to implementation by the licensee, based on (b)1 above.

3. A written response shall be provided by the licensing agency within 15 working days, documenting any conditions that must be met as part of the approval of the reduction of staff coverage.

(c) Staff are not required to be on-site when no persons served are present in the residence, but trained staff members, familiar with the person(s) served, shall be available for emergencies.

(d) A written staff schedule, for at least a two-week period, shall be available for review at each residence. The staff member in-charge shall be designated on the schedule for each shift.

1. The licensee shall designate specific duties and responsibilities for the in-charge staff person.

2. At least one staff member, currently trained and certified in first aid and CPR, shall be on duty for each shift.

3. At each residence, the total number of staff shall be no less than one staff member for every three persons served when the persons are in the home and awake.

i. The ratio can be altered in accordance with the needs of the persons served as specified in (b) above.

4. At each residence, the total number of staff shall be based on the needs of the persons served but shall be no less than one staff member for every five persons served when the persons are sleeping.

i. The ratio can be altered in accordance with the needs of the persons served as specified in (b) above.

5. When a specific person served requires one-to-one coverage by staff, that staff member shall be considered unique and not as a part of the overall ratio as specified in the approved Program Description for the other persons in residence.

6. With the exception of an emergency, adjustments of staff ratios as specified in the approved Program Description shall not be implemented until approval is granted by the licensing agency.

10:44C-2.9 Records: persons served

(a) A file shall be maintained for each person served in a licensed community residence for persons with head injury.

1. The file shall be legibly marked with the name of the person served.

(b) Files shall be maintained at the residence or at the pre-determined location stated in the program description or in revisions to the program description.

(c) A person served shall have access to his or her records, unless clinically contraindicated and documented.

(d) The record of each person served shall include:

1. Pre-admission information, as follows:

i. The full name, date of birth, and sex of the person served;

ii. The person's Social Security, Medicaid numbers or medical insurance numbers;

iii. The date(s) of admission, re-admission, transfer or discharge;

iv. The names and addresses of persons or agencies responsible for placement;

v. The names and addresses of all personal physicians, advance practice nurses and dentists;

vi. The name, address and telephone number of the legal guardian (or guardianship worker), next of kin, and other interested person(s), and a copy of the guardianship determination, if applicable;

vii. Religious preference;

viii. Pre-admission data including diagnosis, a psychological evaluation, as appropriate and/or available and developmental history, including, but not limited to, behavioral characteristics;

ix. The results of physical examination completed within 90 days prior to the scheduled admission date;

x. The results of a Mantoux Skin Test, completed within the past year, obtained within 30 days prior to admission;

xi. Certification from a physician or advance practice nurse stating the person served is free of communicable disease (written documentation shall be provided to the licensee within 72 hours of admission); and

xii. An immunization record, as available and as required for persons served under the age of 22;

2. The results of an annual physical examination and the results of the Mantoux Skin Test, readministered every year;

3. Annual reports from the dentist of dental examinations and corrective work done;

4. Initial reports of unusual incidents;

5. Seizure records, where indicated;

6. The current ITP;
 7. Monthly reports of social and behavioral progress of a person served to correspond to the current ITP;
 8. A medically prescribed diet, if required;
 9. Documentation of known allergies;
 10. Medication administration records;
 11. An inventory of valuable personal property; and
 12. Financial records pursuant to N.J.A.C. 10:44C-2.10.
- (e) The records of each person served who has been referred to other agencies for additional or concurrent services shall contain, at a minimum:
1. The place, date and reason for referral;
 2. The name of the contact person; and
 3. A report of the outcome.

10:44C-2.10 Funds and financial records: persons served

(a) Each person served shall have the right to manage his or her own personal funds consistent with his or her abilities as documented in his or her ITP.

1. If the TDT has determined that the person served cannot independently manage his or her funds and finances, the TDT shall determine how much money, if any, can be managed by the person served at any given time.

(b) The licensee shall develop procedures regarding the management of funds for persons served who have been determined in need of assistance by the TDT.

(c) At the time of admission, each person served shall be provided with a written statement listing the services regarding the safekeeping and management of funds.

(d) The licensee shall obtain written authorization for any of the funds of a person served to be entrusted.

1. The authorization shall specify which funds are to be entrusted to the licensee, including, but not limited to, Personal Needs Allowance, paychecks, Patient Trust Fund, monetary gifts, payment from family members, transportation reimbursements, public assistance, income tax rebates and insurance claims.

2. The person served and his or her guardian, where applicable, shall sign the authorization.

(e) For all funds entrusted to the licensee, the licensee shall maintain records and receipts of all income received and all disbursements of the funds of the person served.

1. All receipts related to disbursements of a person's funds and purchases made on behalf of a person served shall be maintained while the person served resides at the residence.

(f) If a person's funds are entrusted to an agency, moneys received by a person served in excess of \$100.00 shall be placed in an interest bearing account unless otherwise determined by the TDT.

1. The account shall be in a form that clearly indicates that the licensee is acting in a fiduciary capacity regarding the funds of the person served and that any interest from the account shall accrue to the person served.

2. The licensee may keep up to \$100.00 of a person's money in a non-interest bearing account or petty cash fund, to be readily available for current expenditures, providing it is kept for safekeeping in an account separate from all other funds for the residence.

i. Any increase in this amount shall be authorized by the person served and his or her guardian, where applicable.

(g) The licensee shall, upon written request from the person served and his or her guardian, where applicable, return any or all of the person's funds given to the licensee for safekeeping, including the interest accrued from deposits.

(h) There shall be no loans of finances, resources or property from a person served to the licensee, staff member, or any other person served.

(i) The licensee to whom the person served entrusts his or her funds shall assure that the management of such funds does not jeopardize the person 's entitlements to any appropriate Federal or private benefit.

(j) The licensee shall allow each person served and guardian, where applicable, access to a written record of all financial arrangements and transactions involving the person's funds, upon request. Copies of this record shall be made available to the person served and his or her guardian, upon request.

SUBCHAPTER 3 ADVOCACY AND RIGHTS

10:44C-3.1 General requirements

(a) The provision of services and support shall demonstrate recognition that persons with head injury have the same rights as all other citizens.

1. A person's exercise of his or her rights shall not be prohibited or be used as a cause for retribution against him or her.

(b) Upon admission to the program and upon subsequent request, the licensee shall provide the person served and his or her guardian, where applicable, with the following:

1. A copy of the list of rights of persons served, as specified at N.J.A.C. 10:44C-3.4(b);

2. The names, addresses and telephone numbers of advocates available to assist the person served in understanding and enforcing these rights, to include, at a minimum:

- i. New Jersey Protection and Advocacy, Inc.;
- ii. Community Health Law Project;
- iii. Brain Injury Association of New Jersey (1-800-669-4323);
- iv. Office of Licensing and Inspections;
- v. Special Response Unit;
- vi. Bureau of Guardianship, if applicable;
- vii. Office of the Public Guardian;
- viii. His or her case manager;
- ix. Division of Youth and Family Services' Child Abuse Control number (1-800-792-8610), if applicable; and
- x. Office of the Ombudsman (1-877-582-6995), if applicable;

3. A copy of the licensee's rules which apply to the residence of the person served; and

4. A copy of the licensee's grievance procedure for appealing agency decisions, or decisions of the TDT, which shall have the following:

- i. A minimum of two levels of appeal, the last of which shall involve the executive leadership or the licensee;

- ii. Time frames for decision-making at each step;
- iii. Written notification procedures;
- iv. The rights and responsibilities of each party; and
- v. The opportunity for the person served, his or her guardian or his or her personal advocate to obtain assistance from any of the individuals or organizations listed at (b)2 above.

(c) If a person served is unable to read (b)1 through 4 above, the text shall be read to the person served in a language or manner the person understands.

1. The licensee shall make provisions to explain portions that are not understood and answer any questions the person served may have regarding (b)1 through 4 above.

(d) A copy of a written acknowledgment that (b)1 through 4 above has been explained and understood shall be immediately signed and dated by the person served, the licensee's representative(s) and the person's guardian, if present.

1. If the guardian is not present, the signed acknowledgment shall be sent to the guardian within five days.

i. Documentation shall be maintained in the person's record.

2. The acknowledgment may also be witnessed by a personal advocate, if present.

3. The acknowledgment shall be placed in the record of the person served.

(e) Persons served shall receive training and support in order to understand options, make choices and exercise rights and responsibilities.

1. The exercise of rights is not limited when a person served has a guardian or interested family.

(f) The licensee shall be responsible for utilizing a Human Rights Committee in accordance with N.J.A.C. 10:41-4.

(g) The licensee shall have procedures for the documentation of the investigation and resolution of allegations of infringements of rights.

10:44C-3.2 Rules governing a residence

(a) The licensee may establish reasonable rules that govern the conduct of persons in a particular residence, including, but not limited to, rules regarding smoking, pets and visitors, provided:

1. The rules are commensurate with the abilities and rights of the persons served;
2. Persons served and their guardians, where applicable, are informed of the rules governing a residence prior to their admission;
3. The persons served affected by such rules are consulted whenever a revision is considered, and there is evidence the rules are necessary to promote order and to benefit the collective group;
4. The rules include provisions to ensure that a person served exercising his or her rights does so in such a way so as to not infringe upon the rights of, or endanger, others; and
5. The licensee complies with the rules contained in this chapter regarding the requirements for a grievance process or appeal of a licensee decision or a decision of the TDT as specified at N.J.A.C. 10:44C-2.2(b)8.

(b) A person served or a group of persons served shall be given a copy of such rules, and additional copies shall be made available upon subsequent request

(c) Each copy of the rules shall contain a statement that a person served or a group of persons served has the right to challenge such rules as to their appropriateness through the licensee's grievance procedure, as specified at N.J.A.C. 10:44C-2.2(b)8.

(d) No policy, procedure, or rule of the home shall be inconsistent with or contrary to a right enumerated in N.J.A.C. 10:44C-3.4.

10:44C-3.3 Self-advocacy

(a) The licensee shall identify persons served who want a personal advocate or who wish to participate in a self-advocacy group.

(b) Persons with head injury shall be given the opportunity to participate in a self-advocacy group of their choice.

(c) Notices of advocacy or self-advocacy conferences, seminars or meetings shall be made available to all persons served in each residence unless determined otherwise by the TDT.

(d) The process of conducting house meetings shall include the person served as much as possible unless the TDT has determined otherwise. The scheduling of such meetings shall include the persons served living in the home. Staff shall assist the persons served with setting the schedules and agendas for house meetings.

10:44C-3.4 Enumeration of rights

(a) The provision of services and support shall demonstrate recognition that persons with head injury have the same rights as all other citizens.

1. A person's exercise of his or her rights shall not be prohibited or be used as a cause for retribution against him or her.

(b) Each person served shall further be afforded the following rights and freedoms while living in a community residence for persons with head injury:

1. A safe, clean place to live and a lifestyle like other New Jersey residents;

2. Privacy and respect;
3. Physical exercise and the opportunity to practice personal health care;
4. Keep and use his or her own clothes, money and personal things, and to have a place to put them that no one else may use;
5. Associate with members of the opposite sex;
6. Practice the religion of his or her choice, or choose not to practice any religion;
7. Send and receive mail without it being opened or read by other people and to have help, if he or she wants it, in reading or writing letters;
8. Make or receive private telephone calls during set times, unless the person served has a personal telephone, in which private telephone calls shall not be restricted unless otherwise determined by the TDT;
9. Have a healthy diet;
10. Have a voice in matters that affect him or her;
11. Have visitors of his or her choice during set times;
12. Work with pay that is a commensurate wage or otherwise appropriate for the type or work he or she does and how well he or she does it;
13. Request release from a program or transfer to another program;
14. Register and vote in all elections;
15. Share in developing his or her "Individual Treatment Plan" (ITP) designed specifically for him or her and to help decide what kinds of programs would be best for him or her in that plan;
16. Have his or her ITP and all records about him or her kept confidential, unless the person or the person's legal guardian says that someone else may see them;

17. Be free from any restrictions of appropriate movement or behavior;
18. Receive special therapy services, if they will help him or her;
19. Receive guardianship services, if the person served needs them and if the person served is an adult;
20. Receive regular medical, dental and nursing care in order to stay in good health and to receive prompt treatment of any health problem;
21. Be informed of the condition of his or her health and to be able to contact his or her doctor;
22. Be free from unnecessary medical tests or treatment;
23. Be free from physical restraint or from being isolated unless in an emergency; and
24. Be free from physical punishment, abuse, neglect and exploitation.

(c) The licensee shall ensure that staff are familiar with and observe the rights enumerated in (b) above.

1. The licensee shall assure that a copy of the rights identified at (b) above is available at each residence licensed under this chapter.

(d) Persons served shall receive training and support in order to understand options, make choices and exercise rights and responsibilities.

1. The exercise of rights shall not necessarily be limited even when a person served has a guardian or interested family.

10:44C-3.5 Informed consent and guardianship

(a) In securing informed consent, the licensee shall inform each person served or his or her guardian of:

1. Any medical condition requiring intervention;
 2. Any need for behavioral intervention, including, but not limited to, behavior modification or the administration of psychotropic medication;
 3. Any other circumstance requiring intervention;
 4. The attendant risks of treatment;
 5. The attendant risks of refusing treatment;
 6. The right to refuse treatment; and
 7. The right to withdraw informed consent at any time.
- (b) Informed consent shall not be coerced.
- (c) Informed consent shall be obtained in writing and filed in the record of the person served.
- (d) Any person served over the age of majority and without a court-appointed guardian shall be expected to sign his or her own informed consent forms.
- (e) When a person served has a guardian, informed consent shall be signed by the guardian.
- (f) Every effort shall be made to support the person served through formal and informal activities prior to pursuing guardianship, unless the person served is in risk of immediate harm.
- (g) The removal of decision-making responsibility through guardianship shall only be considered for persons served who, through their actions, do not demonstrate adaptive behavior or do not demonstrate that they are capable of identifying or understanding the consequences of their decisions.

(h) The TDT shall identify the need for assistance and guardianship for each person served, unless the person served is in risk of immediate harm.

(i) Neither a service agency nor an employee or volunteer shall become a guardian for any person served.

(j) The licensee may petition the court to appoint a person to assist the person served with a particular decision.

(k) An advocate from a local, State or private agency may be requested to assist the person served.

(l) Family members may be requested to assist in making decisions with and for the person served, if the person served so desires.

10:44C-3.6 Restriction or modification of rights

(a) If the exercise of the rights of the person served is restricted or modified, the ITP shall document each restriction or modification.

1. No restriction or modification of rights shall be implemented until it is reviewed and approved by the TDT.

2. The ITP shall state when restrictions or modifications may be lessened or eliminated.

3. The TDT shall review all such restrictions or modifications on an as needed basis, but not less than on a quarterly basis.

(b) The licensee shall be responsible for utilizing a Human Rights Committee in accordance with N.J.A.C. 10:41-4.

1. The Human Rights Committee shall review all restrictions or modifications of rights.

(c) The person served or his or her legal guardian shall be advised of his or her right to appeal any restriction or modification of rights.

1. The person served or his or her legal guardian shall be informed of his or her right to obtain assistance from any of the individuals or organizations at 10:44C-3.1(b)2.

(d) Any use of mechanical restraint or safeguarding equipment shall comply with N.J.A.C. 10:42.

SUBCHAPTER 4 SERVICE DELIVERY/REHABILITATION/HABILITATION

10:44C-4.1 Pre-admission and admission

(a) The licensee shall have written criteria for admission to a particular program, including temporary (respite) placements. These criteria shall include, at a minimum:

1. Specific services provided;
2. A non-discrimination statement regarding admissions, assuring no one will be denied admission on the grounds of race, sex, color, national origin, religion, age, physical or mental disability, ancestry, sexual preference/affiliation, including AIDS or HIV infection, atypical cellular hereditary blood traits or any other legally protected status;
3. A statement regarding any limitations an agency may have in providing services to a person served with a specific head injury;
4. A statement affording all persons served and/or their guardians the opportunity of preplacement visits to the residence;

5. A statement regarding any minimum and/or maximum age restrictions;
6. A statement regarding respite criteria; and
7. Fees charged by the licensee.

(b) The number of persons with head injury admitted to a residence shall not exceed the licensed capacity.

(c) Prior to admissions, the licensee shall obtain the following:

1. Information that addresses eligibility for services;
2. Results from a medical examination conducted no more than 90 days prior to admission;
3. A current immunization record, as available and hepatitis B screening results in accordance with N.J.A.C. 10:48-2;
4. The results of a Mantoux Skin Test for tuberculosis, administered within one year prior to the date of admission; and
5. Pre-admission information required under N.J.A.C. 10:44C-2.9(d)1i through xiii.

(d) The licensee shall, at the time of admission, and without cost to the person served, provide the following:

1. A copy of the written procedures for safekeeping of valuable personal possessions;
2. A written statement explaining the rights of the person served;
3. A copy of the rules governing the residence, as applicable;
4. A copy of the grievance procedure;
5. A copy of the procedure regarding toll calls/charges; and
6. A copy of the financial rights and services procedures.

(e) The licensee shall make provisions to explain (e)1 through 6 above and answer any questions the person served may have regarding this information.

(f) The guardian of the person served shall be notified, in writing, that the person served has had this information explained to him or her.

1. A copy of the notifications shall be maintained in the person's record.

(g) Within 30 days of an admission, an ITP shall be developed or modified by the TDT.

10:44C-4.2 Individual treatment plan (ITP)

(a) A TDT shall be responsible for the development of a treatment plan for each person served.

1. In the absence of a court determination, the TDT shall determine the need for personal guidance for each person served.

(b) The TDT shall conduct a full review of each comprehensive service plan on a quarterly basis, or as needed, to address progress and regression.

(c) The licensee shall conduct a monthly review of progress or regression utilizing, at a minimum, a mini-team review (see definition).

(d) At service initiation, evaluations covering the areas in (e)1 through 11 below shall be obtained within 30 days.

1. Self-assessment of preferences, goals and needs;
2. Physical examination and health assessment;
3. The need for post acute care;
4. Dental examination (including oral hygiene practices);

5. Social: reflecting social and developmental history, social interactions, family situation and the social support network of the person served;
6. Psychological: emotional and intellectual status;
7. Adaptive behavior or independent living: functional skills for personal care and self-support, mobility and other areas affecting daily life;
8. Developmental, cognitive, educational and/or vocational capabilities or needs;
9. Medication and immunization history;
10. Screening of nutritional, vision, auditory and speech and language areas (must reflect current status and need for support or training); and
11. Assessment in additional areas specific to the needs of the person served, including:
 - i. Self advocacy;
 - ii. Self care;
 - iii. Functional literacy;
 - iv. Financial management, including short- or long-term budgeting skills;
 - v. Home maintenance;
 - vi. Personal hygiene skills;
 - vii. Safety and emergency procedures;
 - viii. Accessing community resources;
 - ix. Recreation and leisure skills;
 - x. Decision making skills;
 - xi. Social and interpersonal skills; and
 - xii. Exercise of rights and responsibilities.

(e) Treatment and/or service needs shall be identified without regard to the immediate availability of those services.

(f) Each training program comprising the plan shall include information that addresses the following issues:

1. The need for rehabilitation and/or habilitation for the person served, and his or her learning preferences and strengths (for example, learning modality);
2. Specific instructions for prompting or coaching the person served;
3. How to interact with the person served during training:
 - i. What to do when no response is received;
 - ii. What to do when the person served is not cooperative; and
 - iii. What to do when the person served responds as desired;
4. Unique learning motivation for the person; and
5. Which environments are most conducive to promoting the learning or change of the person served.

(g) The goals and objectives shall be written in behavioral terms that have the following characteristics:

1. Reflect short-term outcome (one year or less);
2. Reflect a small step toward goal accomplishment;
3. Target a single behavior;
4. Are stated in measurable terms;
5. Contain performance criteria;
6. Include a statement of performance stability over time;
7. Identify who is responsible for implementing a specific goal or objective; and

8. The data collection methods to be used, including specific directions regarding:
 - i. What is to be measured;
 - ii. How it is to be measured;
 - iii. How frequently the behavior shall be measured; and
 - iv. How progress shall be reported for monthly review.

10:44C-4.3 Monitoring and review of Individual Treatment Plans

- (a) The case manager shall conduct a monthly review in order to, at a minimum:
 1. Monitor implementation of the plan; and
 2. Make needed adjustments in conjunction with the TDT so that continuous progress is made toward achieving goals.
- (b) A thorough, quality monthly review has at least three components:
 1. A review of specific progress data;
 2. Observation of plan implementation; and
 3. A review of the entire plan.
- (c) If the case manager's review reveals the need for additional support for implementation of any element of the plan or if program modification is required, the case manager shall call for either a mini-team review or a full TDT meeting.
- (d) Any major change in residential service and/or supports of a person served shall include the utilization of the TDT.
- (e) A person served may be unsupervised for specific amounts of time with approval by the TDT documented in the ITP.

1. If unsupervised time results in a change in the program description the licensee shall follow the requirements at N.J.A.C. 10:44C-2.8(b).

(f) Any proposed changes to the ITP shall be recommended to the case manager immediately.

1. If the case manager concludes that proposed changes to the ITP result in significant differences from the intent of the TDT, he or she shall secure input from the TDT.

2. All changes in the ITP shall be communicated to the members of the TDT.

3. If, after receipt of the written ITP, there is a disagreement by any party, the TDT shall meet to discuss the change.

4. The ITP may be implemented pending resolution of the discussion.

10:44C-4.4 Transfer or discharge

(a) Should the licensee and the placing agency determine that a residence is no longer suitable or no longer meets the needs of a person served, the person shall not be maintained at that residence, provided substantive evidence is given to the placing agency.

(b) In the case of a planned transfer or discharge, at least 30 days prior to the anticipated discharge date, at a minimum, the following shall occur:

1. The person served, the family, the guardian, and the referring source, as appropriate, shall receive 30 days' notice concerning a planned transfer or discharge.

2. An addendum to the ITP shall update the existing plan and include the specifics of the transition; and

3. The development of the discharge plan shall include the licensee, the person served and his or her guardian, as appropriate, the TDT and a representative of the placing agency.

i. The discharge plan shall assess the continuing needs of the person served and recommend a plan for provision of follow-up services in the new environment of the person served.

ii. The appropriate Division Regional Assistant Director's Office shall be notified, if necessary.

iii. The full records of the person served shall be transferred.

(c) A transfer or discharge summary shall be prepared for each person served who is leaving the program, and shall contain:

1. The diagnosis or disability;

2. The strengths, abilities, needs, and preferences of the person served;

3. Desired outcomes and expectations established;

4. The services provided;

5. Desired outcomes and expectations achieved;

6. The reason for the transfer or discharge; and

7. Referrals and recommendations to assist the person served to maintain and/or improve functioning and increase independence.

(d) Upon an emergency transfer or discharge of a person served, the licensee shall make recommendations to the person, his or her legal guardian, interested family and/or his or her personal advocate regarding follow-up care required.

1. The person or his or her legal guardian shall have the right to appeal the emergency transfer or discharge in accordance with N.J.A.C. 10:44C2.2(b)8.

SUBCHAPTER 5 HEALTH AND SAFETY

10:44C-5.1 General health care

(a) A personal, primary physician or medical group/clinic or advance practice nurse shall be identified for each person served.

(b) Each person served shall, at a minimum, have an annual medical examination.

1. The examining physician or advance practice nurse shall sign, date and document the results of the examination.

2. A copy of the results of the annual examination shall be maintained in the file of the person served. The confidentiality of this document shall be maintained in accordance with N.J.A.C. 10:41-2.

3. Should a competent person served refuse such an examination, documentation signed and dated by the person served rejecting the service, as well as the name of the staff offering the service, shall be filed in the record of the person served.

4. Additional documentation shall be provided whenever the refusal of treatment is considered to be necessary, but not life threatening. The document shall identify steps taken to counsel the person served regarding the risks and consequences of refusal.

(c) Each person served shall, at a minimum, have an annual dental or oral examination.

1. A record documenting the results of the dental examination, signed and dated by the dentist, shall be maintained in the record of the person served.

2. Should a competent person served refuse such an examination, documentation signed and dated by the person served rejecting the service, as well as the name of the staff offering the service, shall be filed in the person's record.

3. Additional documentation shall be provided whenever the refusal of any medical exam or treatment is considered necessary, but not life threatening. The document shall identify steps taken to counsel the person served regarding the risks and consequences of refusal.

(d) Each year the person served shall have a Mantoux tuberculin skin test.

1. If the person served has had a previous positive Mantoux tuberculin skin test, or the result of the Mantoux tuberculin skin test is significant (10 or more millimeters (mm) of induration), the licensee shall require:

i. That the person served obtain a written statement from a physician or advance practice nurse certifying that he or she poses no threat of tuberculosis contagion; or

ii. A protocol to follow, recommended by the physician or advance practice nurse, before allowing the person served to come into contact with other persons served and staff.

2. The licensee shall support the person served in adhering to the recommended follow-up testing, if any, by the physician or advance practice nurse.

(e) The licensee shall follow-up on all health needs including medical treatment, pharmaceutical, dental or other needed services.

1. Documentation shall be maintained in the record of the person served.

(f) The licensee shall assure that the community residence has access to emergency medical services.

(g) Each licensed program site shall have a first aid kit to include:

1. Antiseptic;
2. Rolled gauze bandages;
3. Sterile gauze bandages;
4. Adhesive paper or ribbon tape;
5. Scissors;
6. Adhesive bandage (for example, Band-Aids);
7. Either a standard type or a digital thermometer;
8. CPR Mask; and
9. Vinyl gloves.

(h) Upon confirmation that a person served has contracted a communicable disease as identified in the chapter Appendix, incorporated herein by reference, the licensee shall assure exposed persons served are placed under a physician's or advance practice nurse's care.

1. The physician or advance practice nurse of the person served shall determine treatment and precautions to be taken.

i. Documentation of treatment and precautions shall be maintained in the person's file.

2. If the person served does not live alone, the licensee shall contact the primary physician or advance practice nurse for all other persons served in the residence.

(i) The licensee shall comply with N.J.A.C. 10:48-2 regarding the screening, treatment and control of viral Hepatitis B.

(j) The agency shall assure that all adaptive and assistive devices are available for each person served who requires them.

10:44C-5.2 Prescription medication

(a) Persons served receiving medication shall take their own medication to the extent that it is possible, as assessed and determined by the TDT, documented in the person's ITP and in accordance with licensee procedure.

(b) If the person served is not responsible for or capable of taking his or her own medication, trained staff members shall assist and supervise the administration of the medication as prescribed.

(c) A written record shall be maintained of all medication administered by the trained staff members.

1. The record shall include the following:
 - i. The name of the person served;
 - ii. The date;
 - iii. The name of medication;
 - iv. The type of medication;
 - v. The dosage;
 - vi. The frequency;
 - vii. The initials and corresponding signatures of staff administering the medication;
 - viii. Medication administration codes; and
 - ix. All known allergies.

(d) If a person served is capable of taking medication without assistance, no daily medication administration record is required.

1. A list identifying the name of the medication(s), type of medication(s), dosage, frequency, date prescribed and the location of the medication(s) shall be filed in the record of each person served.

(e) Written documentation shall be filed in the record of the person served indicating that all prescribed medication was re-evaluated at least annually by the prescribing physician.

(f) Staff shall have access to a medication reference book, current within three years and written for lay persons, which shall include information on side effects and drug interaction.

(g) Any change in medication dosage by the physician shall be immediately noted on the current written medication record by staff consistent with the licensee's procedure.

1. Verbal orders from the physician shall be signed by the physician within 24 hours or by the first business day following receipt of the verbal order.

2. The prescription shall be revised at the earliest opportunity.

(h) A supply of medication, adequate to insure no interruption in the medication schedule, shall be available to persons served at all times.

(i) The licensee or designee shall supervise the use and storage of prescription medication, ensuring that:

1. A storage area of adequate size for both prescription and non-prescription medications shall be provided and kept locked for those persons served who are not self-administering their own medication;

2. Each person served who administers his or her own medication shall receive training and monitoring by the licensee regarding the safekeeping of medications for the protection of others, as necessary.

i. Medication shall be kept in an area that provides for the safety of others, if necessary;

3. Staff shall have a key to permit access to all medication at all times and to permit accountability checks and emergency access to medication.

i. Specific controls regarding the maintenance and use of the key to stored medication shall be established by agency procedure;

4. Each prescribed medication for each person served shall be separated within the storage areas, as follows:

i. Oral medications shall be separated from other medications; and

ii. If necessary, medications that require refrigeration shall be maintained in a manner that provides for the safety of others, for example, by using locked boxes;

5. All medications shall be kept in their original containers from the pharmacy and shall be properly identified with the pharmacist's label.

i. A person served who is self-medicating may choose adaptive equipment that continues to assure the safe storage of medication;

6. Medications that are outdated or no longer in use shall be destroyed according to licensee procedure;

7. When medication is prescribed PRN (as needed), the prescription label shall include the following:

i. The name of the person served;

ii. The date;

iii. The name of the medication;

iv. The dosage;

- v. The specification of the interval between dosages;
 - vi. The maximum amount to be given during a 24-hour period;
 - vii. A stop date, when appropriate; and
 - viii. Under what conditions the PRN medication shall be administered; and
8. The administration of PRN medication, along with the time of administration, shall be documented on the written medication record and shall be communicated to the on-coming shift of residential staff.
- (j) A statement from the physician regarding the usage and contraindications of over-the-counter medications shall be available for staff reference and use and shall be updated annually.

10:44C-5.3 Psychotropic medication

- (a) Within two weeks after admission, the licensee shall assure that all persons served who are receiving psychotropic medication upon admission receive a clinical assessment by a physician.
- 1. Except in an emergency, the TDT shall meet before psychotropic medication is prescribed.
 - 2. Except in an emergency, psychotropic medication shall be prescribed in writing prior to administration.
 - 3. Except in an emergency, psychotropic medication shall not be administered without appropriate supplemental interventions approved by the TDT.
- (b) The licensee shall assure that the following provisions are implemented regarding the administration of psychotropic medication in an emergency:

1. Short acting injectable psychotropic medication used in emergencies shall be administered only by a licensed physician or licensed professional nurse.

2. In an emergency, telephone orders shall be permitted provided they are signed by the physician within 24 hours.

3. The person served shall be monitored continuously by agency staff trained to observe side effects.

4. The physician ordering the injectable psychotropic medication shall examine the person served within 48 hours of the injection.

5. When a psychotropic medication is prescribed and administered in an emergency the TDT shall meet to review the use of the psychotropic medication within 5 working days. The results of the review shall be recorded in the record of the person served.

(c) Psychotropic medication shall not be used for punishment, for the convenience of staff or as a substitute for a rehabilitative treatment environment.

(d) “As needed” or PRN usage of psychotropic medication shall be prohibited.

(e) Persons served shall be maintained on the lowest possible effective dosage of psychotropic medication.

(f) All psychotropic medication shall be monitored by the prescribing physician for clinical effectiveness as necessary but at least quarterly.

(g) Because of potential serious toxicity the following psychotropic medications shall be used only after a complete history, physical examination and laboratory assessment of the person served has been conducted by a physician:

1. Lithium (lithium shall be administered under the surveillance of a physician, preferably a psychiatrist, or advance practice nurse, to include monitoring of blood levels);

2. Carbamazepine;
3. Valproic acid;
4. Clozapine; and
5. Clomipramine.

(h) The use of psychotropic medication shall be incorporated in the ITP.

1. The TDT shall review the use of psychotropic medication at least on a quarterly basis. If, after a reasonable period of time, there is no apparent improvement, other treatment options shall be considered. The TDT shall determine whether or not the person served is adversely affected by the medication and whether or not other concerns or problems with the administration of the medication have been noted.

- i. The results of the review shall be recorded in the record of the person served.
- ii. Concerns of the TDT shall be referred to the physician, the Behavior Management Committee and, as necessary, the Human Rights Committee.

(i) Psychotropic medication shall only be used as an appropriate intervention either alone or in conjunction with other strategies to treat a psychiatric disorder or for behavior management, as follows:

1. For the treatment of psychiatric disorders, psychotropic medication may be prescribed for the purpose of reducing or eliminating the symptoms of a psychiatric disorder that is diagnosed by a psychiatrist, using the most recent edition of the Diagnostic and Statistical Manual (DSM). The DSM may be obtained from the American Psychiatric Association, 1900 K Street, Washington D.C. 20005.

2. For behavior management, psychotropic medication may be prescribed for the purpose of modifying maladaptive behavior when no specific psychiatric diagnosis has been made.

i. The use of psychotropic medication shall not be the sole modality to modify maladaptive behavior but shall be supplemented by appropriate interventions based upon a functional analysis, for example, environmental manipulation, staff training and/or behavior modification.

ii. The TDT may decide to use other appropriate behavior interventions in lieu of psychotropic medication.

3. When a psychiatric disorder is not diagnosed and psychotropic medication is recommended for behavior management, psychotropic medication shall not be administered prior to review and approval by the Behavior Management Committee and the chairperson of the Human Rights Committee.

(j) Written informed consent shall be obtained for each generic class of psychotropic medication. A new consent shall not be required for a change of medication within the same generic class.

(k) The licensee shall ensure that psychotropic medication is stored as specified at N.J.A.C. 10:44C-5.2(i).

(l) The licensee shall ensure that each staff member involved in the administration of psychotropic medication receives the following training:

1. Indications for drug use; and
2. Therapeutic effects and side effects.

10:44C-5.4 Telephone numbers

(a) The following emergency numbers shall be easily accessed and located by each telephone:

1. 9-1-1; and
2. The telephone number to contact the licensee's staff in the event of an emergency.

(b) The following telephone numbers for reporting unusual incidents or for filing complaints shall be easily accessed and available to all persons in the residence:

1. The Division's hotline number(s);
 - i. Northern Regional Office (Flanders): 973-927-2600
 - ii. Northern Regional Office (Paterson): 973-977-4004
 - iii. Upper Central Regional Office: 973-324-2000
 - iv. Lower Central Regional Office: 609-292-4500
 - v. Southern Regional Office: 609-561-5070
2. If a minor is living in residence, the telephone number for the Division of Youth and Family Services' Office of Child Abuse Control (1-800-792-8610).
3. If a person served 60 years of age or older is living in the residence, the telephone number for the Office of the Ombudsman for the Institutionalized Elderly (1-877-582-6995).
4. The Special Response Unit (609-984-5479).

10:44C-5.5 Food

(a) Sanitary practices shall be utilized in the storage, handling, preparation and serving of all food and drink.

(b) All appliances, equipment and utensils used for eating, drinking, preparation and serving of food shall be kept clean and in good condition and thoroughly washed after each use.

(c) Food shall be readily accessible to persons served unless limitations have been approved by the TDT.

(d) The licensee shall assure that each person served is provided the opportunity for the following:

1. Three nutritionally balanced meals, varied in nature, in the home or in the community.

i. Food shall meet the medical and dietary needs of the persons served.

ii. Unless otherwise specified by the person's medical needs, the diet for each person served shall be prepared in accordance with the latest edition of the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences.

iii. When a medical or otherwise specified diet is required, the licensee shall assure that all equipment necessary for preparing food is readily accessible and used appropriately.

iv. Documentation of all such diets shall be maintained on the menu.

v. The licensee shall make reasonable adjustments to personal preferences, habits, customs and appetites.

(e) Persons served shall be afforded the choice of dining with other persons or dining by themselves.

i. If a person served decides to dine alone, such choice shall be documented in his or her ITP.

(f) A person served shall be allowed to eat at his or her own pace, unless otherwise determined by the TDT.

(g) Menus, to include all meals and available snacks, shall be dated, prepared at least one week in advance, and retained on file for a period of 30 days, unless a person's ITP documents independence in meal purchase and planning.

(h) Consistent with their abilities, the persons served shall be consulted for preferences in determining the weekly menu and/or changing it as desired.

(i) Any substitution of food from the menu shall be of equal nutritional value and shall be documented on the menu.

10:44C-5.6 Clothing

(a) Each person served shall have the opportunity to select and purchase clothing according to personal taste and preference.

(b) The licensee shall provide assistance to persons served who require assistance in order to maintain their own clothing.

(c) The licensee shall provide laundry facilities without additional charge to persons served, unless there is documentation in a person's ITP that the person served is to pay for the laundering of his or her own clothing or there is a provision in the licensee's contract for the person served to pay for the laundering of his or her clothing.

10:44C-5.7 Vehicle safety

(a) All vehicles used under the auspices of the agency to transport persons with head injury shall include:

1. Emergency equipment which shall include spare tire, jack and at least three portable red reflector warning devices;

2. A first aid kit to only include:

i. Antiseptic;

iii. Rolled gauze bandages;

iv. Sterile gauze bandages;

v. Adhesive paper or ribbon tape;

vi. Scissors;

vii. CPR mask;

viii. Vinyl gloves; and

ix. Adhesive bandages (for example, Band-Aids);

3. Snow tires, all weather tires, or chains when weather conditions dictate their use;

and

4. One 10:BC dry chemical extinguisher.

(b) All vehicles used under the auspices of the agency to transport persons served shall comply with all applicable safety and licensing regulations established by the New Jersey Division of Motor Vehicles.

1. The licensee shall maintain valid liability insurance on all vehicles used to transport persons with head injury.

2. All drivers shall have a driver's license valid in the State of New Jersey.

3. A person served whose ITP has determined that being left unattended in a vehicle would present a danger to him or her or others, he or she shall be supervised by staff members.

4. The interior of each vehicle shall be maintained in a clean, safe condition and shall be free of obstacles obstructing clear passage to operable doors.

5. All equipment stored in any vehicle used under the auspices of the agency to transport persons with head injury shall be properly secured in order to prevent injury to all persons in the vehicle.

10:44C-5.8 Workplace safety

(a) The licensee shall comply with the Occupational Safety and Health Administration's (OSHA) regulations (29 CFR) as they may apply to a particular type of residence the licensee operates, and shall ensure consistent and sound enforcement.

1. The licensee shall maintain on file all inspection reports and correspondence documenting non-compliance with OSHA requirements.

2. All such reports and correspondence shall be available for review by authorized representatives of the Department.

SUBCHAPTER 6 FIRE SAFETY AND PHYSICAL ENVIRONMENT

10:44C-6.1 Fire safety

(a) Each community residence operated by the licensee shall be registered with the Department of Community Affairs and shall be subject to inspection on an annual basis, consistent with N.J.S.A. 52:27D-192 et seq., and rules promulgated thereunder.

1. All written reports from such inspections shall be maintained on file.

(b) Each community residence for persons with head injury shall comply with the provisions of N.J.S.A. 52:27D-192 et seq., the Uniform Fire Safety Act.

1. The licensing agency may identify any additional fire safety precautions required.

(c) Variances from regulations may be requested in accordance with N.J.S.A. 52:27D-200.

10:44C-6.2 Fire evacuation plans

(a) The licensee shall design an evacuation plan for each residence in accordance with the Uniform Fire Safety Act, N.J.S.A. 52:27D-192 et seq., and the individual characteristics of the home.

1. The plan shall be further developed by evaluating each person served according to the following risk factors:

- i. Mobility;
- ii. Ability to problem-solve;
- iii. Ability to evacuate;
- iv. Compliance issues;
- v. Medical factors; and
- vi. Behavioral factors.

(b) The evacuation plan shall be reviewed at least annually and revised:

1. Whenever a new person served moves into the residence; and
2. Whenever current occupants develop problems evacuating the residence.

(c) All persons served shall be able to evacuate the residence in three minutes or less.

10:44C-6.3 Egress protocols

(a) Persons served residing in a community residence are presumed to have a prompt self-evacuation capability when the following conditions are met:

1. A site-specific evacuation plan is drawn up and followed;
 2. Fire drills, supervised by staff, are performed a minimum of once per month;
 3. Each shift performs at least four fire drills a year;
 4. Fire drills are performed at random times so that persons served are engaged in a variety of routine activities during the drills;
 5. Fire drills assume different fire location simulations that require that all means of egress be used;
 6. The evacuation plan includes a designated meeting spot at which the persons assemble after evacuating the premises;
 7. A prompt egress time of three minutes or less is attained and maintained;
 8. Persons served are free from physical restraint and are not locked in at any time;
- and
9. Written records are maintained including the following information:
 - i. The date and time of the fire drill;
 - ii. The location of the simulated fire;
 - iii. The evacuation plan followed;
 - iv. The names of persons served and staff who participated in the drill; and
 - v. The time required for all persons to evacuate the residence.

(b) In the event that a person served exceeds the allotted evacuation time, the licensee shall take one of the following steps:

1. Training in evacuation shall be immediately provided to the person served.
 - i. If the person served is unable to evacuate the residence in three minutes or less after training, the licensee shall assure that (b)2, 3 or 4, or a combination thereof, is/are immediately implemented.
 2. Add awake staff to assure the three-minute time is met;
 3. Relocate persons served so that the three-minute time is met; or
 4. Conform to the I-1 Use Group classification (see N.J.A.C. 5:23).
- (c) Within 24 hours of admission, each person served shall participate in a fire drill to ensure knowledge of emergency egress procedures.

10:44C-6.4 Use group classification requirements

(a) Group homes housing five or fewer persons served shall meet the requirements of Use Group R-3 of the Uniform Construction Code, provided all persons are either ambulatory or mobile non-ambulatory (see N.J.A.C. 5:23).

(b) One and two-family homes housing six to 15 persons served shall meet the requirements of Use Group R-2 of the Uniform Construction Code, provided all persons are either ambulatory or mobile non-ambulatory (see N.J.A.C. 5:23).

(c) The classification of community residences for persons with head injury into Use Group R-3 or R-2 when some persons are not capable of prompt self-evacuation shall be dependent upon the following:

1. Community residences for persons with head injury housing up to two people not capable of prompt self-evacuation shall be classified as R-3 (for five or fewer) or R-2 (for more than five people) provided the following provisions are met:

i. An interconnected smoke detection system complying with the building subcode for the designated use group shall be provided;

ii. The egress protocol, including a site-specific evacuation plan, shall be followed;

iii. Within 24 hours of admission, each new person served shall participate in a fire drill to ensure compliance with the egress protocols;

iv. One awake staff shall be provided for overnight coverage. Additional awake staff shall be added, as necessary, on a temporary or permanent basis to meet the requirements of the egress protocols as specified in N.J.A.C. 10:44C-6.3;

v. An exit door opening directly to the outside shall be available within 50 feet of each bedroom; and

vi. Ramps shall be provided at all required exits when necessary for wheelchair accessibility.

2. Community residences for persons with head injury housing three to five people not capable of prompt self-evacuation shall be classified as R-2 provided the following additional conditions are met:

i. Emergency egress lighting is provided;

ii. A sprinkler system complying with NFPA 13R is provided;

iii. The smoke detection system is tied into a central station; and

iv. Two awake overnight staff are provided.

3. Community residences housing more than five persons served not capable of prompt self-evacuation shall meet the requirements for an I-2 Use Group classification.

10:44C-6.5 Fire extinguishers

(a) Fire extinguishers shall be serviced annually and shall be of a type and number as determined by the Fire Official designated to enforce the Uniform Fire Safety Act, N.J.S.A. 52:27-197 et seq.

1. Documentation of servicing shall be available for review.

(b) Fire extinguishers and battery-operated smoke detectors shall be checked monthly by staff to ensure all extinguishers and smoke detectors are fully charged and operable.

1. Documentation shall be available on the fire extinguisher or at the residence as part of the administrative records.

10:44C-6.6 General home requirements

(a) For residences housing persons served with physical disabilities, the licensee shall make accommodations to ensure maximum physical accessibility feasible for entrance to and movement within the residence based upon personal characteristics.

1. Any necessary modifications shall conform to the requirements contained in the Barrier-Free Subcode, N.J.A.C. 5:23-7.

(b) The exterior of the residence and the surrounding grounds shall be properly maintained and shall be free from any hazard to health or safety.

(c) The interior of the residence shall be properly maintained and shall be free from any hazard to health or safety.

1. All interior doors shall be equipped with standard hardware that can be readily opened in an emergency. Hooks and eyes, bolts, bars and other similar devices shall not be used on interior doors.

2. An electric powered or single station battery powered carbon monoxide detector shall be mounted in the hallway of any floor with sleeping areas according to the manufacturer's instructions.

(d) Each person served shall have access to a telephone.

(e) Non-slip surfaces shall be provided as appropriate:

1. As non-skid backing for scatter or throw rugs;

2. On stairs and landings; and

3. In each shower or bathtub.

(f) All furniture throughout the home shall be clean and in good repair.

(g) All common areas for living and dining shall be of sufficient size to provide enough seating for all occupants of the home at one time.

(h) No temporary wiring shall be used except UL listed extension cords, rated appropriate to the anticipated load.

(i) Extension cords shall not run under rugs, through walls, or through doorways.

10:44C-6.7 Certificate of occupancy

A certificate of occupancy shall be obtained by the licensee from the local construction official as required by the Uniform Construction Code (see N.J.A.C. 5:23) and/or local ordinance.

10:44C-6.8 Exits

(a) Exit/evacuation areas to be used for mass evacuation shall not be permitted through furnace areas, storage areas or bedrooms.

(b) Locks on doors used as an approved means of egress shall be of the type that can be unlocked from the inside without the use of a key.

10:44C-6.9 Heat sources

(a) Space heaters, including, but not limited to, electrical, kerosene, and quartz heaters, shall be prohibited, unless a waiver is granted by the licensing agency.

1. Written documentation shall be maintained indicating that the local enforcing authority has authorized such use.

(b) Every home shall have heating facilities that are properly installed, maintained in good and safe working condition, and capable of maintaining all habitable rooms at a temperature of 65 degrees Fahrenheit (18 degrees Celsius) when the outdoor temperature is zero degrees Fahrenheit (-18 degrees Celsius).

(c) Heat sources exceeding 110 degrees Fahrenheit (43 degrees Celsius) which are accessible to persons served requiring personal guidance shall be equipped with protective guards or insulated to prevent persons served from coming into direct contact with the heat source.

10:44C-6.10 Water

(a) Hot and cold running potable water shall be available at all times.

(b) Hot water shall not exceed 120 degrees Fahrenheit (49 degrees Celsius) at the tap.

10:44C-6.11 Railings, stairs and hallways

(a) Every porch, balcony, staircase, or place higher than 30 inches off the ground shall be provided with adequate railings, according to the Uniform Construction Code.

(b) All outside stairways consisting of four or more steps shall be provided with a secure handrail.

(c) All stairways and hallways shall be kept free and clear of obstructions at all times.

(d) All carpeting and stair treads shall be adequately secured.

10:44C-6.12 Windows

(a) Every bedroom shall have at least one operable window opening directly to the outside.

(b) First floor bedroom windows shall have an operable window space of five square feet.

(c) Second floor bedroom windows shall have an operable window space of 5.7 square feet.

(d) From May through October, all openable windows and doors used for natural ventilation shall be provided with easily removable insect screening in good condition.

(e) Where the rehabilitation of an existing building creates or includes any building element of a type listed in this section, then the new element shall comply with the requirements for such an element as follows:

1. At least one newly created window opening in sleeping rooms below the fourth story in occupancies in Use Groups R or I-1 shall:

i. Be operable;

ii. Have a sill height of not more than 44 inches;

iii. Have a width of at least 20 inches, a height of at least 24 inches and a minimum total area of 5.7 square feet head to sill and from side to side.

2. New window openings in sleeping rooms shall not be required to comply with 10:44C-6.12(e)1i-iii above in buildings where the sleeping room is provided with a door to a corridor having access to two remote exits or in buildings equipped throughout with an automatic fire suppression system.

(f) Basement windows in buildings of Use Group R-2 shall comply with the requirements of N.J.A.C. 5:23-6.26(a)3 where the window serves as the second means of egress from the dwelling unit.

10:44C-6.13 Bedrooms

(a) Occupancy shall be limited to floors on or above grade level. Bedrooms may be situated in basements under the following conditions:

1. More than half the height of the room is above grade level;

2. The basement is provided with two or more independent means of egress, at least one of which leads directly outside, unless the building has an automatic fire suppression system;

i. An operable window with a net clear opening of at least five square feet, a minimum net clear opening of 24 inches in height and 20 inches in width, and a sill height of not more than 44 inches above the finished floor is acceptable as one of the means of egress; and

3. There are no other conditions that may adversely affect the health, safety, welfare or rights of persons with head injury.

(b) Non-ambulatory persons served shall reside on the first floor of the residence, unless the local enforcing agency of the Fire Safety Code grants a specific variance.

1. In group homes of Use Group R-3 or R-2, bedrooms shall not be above the second floor.

(c) There shall be no access to common areas or other bedrooms through a person's bedroom.

(d) A maximum of two persons served shall share a bedroom.

(e) Bedrooms shall contain the following minimum space per person:

1. Seventy square feet for occupancy by one person served;

2. One hundred thirty square feet for occupancy by two persons served.

(f) At least one half of the floor area of every bedroom shall have a ceiling height of 7½ feet.

1. The floor area of that part of any room where the ceiling is less than five feet shall not be considered allowable floor space.

(g) Each person served shall be provided with the following bedroom furnishings, in good repair, the style of which is consistent with his or her preference unless otherwise specified by the TDT:

1. A standard or platform bed frame;

2. A minimum of a four inch thick mattress of fire resistant material and of sufficient size;

3. A box spring of sufficient size, unless a platform bed is used;

i. Fold-up convertible type beds, roll-aways, cots, hide-a-beds and double deck beds shall be prohibited unless a situation warrants short-term use;

4. Lighting;
 5. Ample linen supplies consisting of, at a minimum:
 - i. A clean pillow, of non-allergenic material if necessary;
 - ii. Two sets of bed linens and pillowcases; and
 - iii. One mattress cover, one blanket, and one bed covering;
 6. Drawers or a closet for the storage of personal possessions and in-season clothing, provided in the room of the person served; and
 7. One mirror chosen by the person served, securely fastened to the wall and/or fastened to a dresser at a height appropriate for the use of the person(s) served occupying the room.
- (h) Persons served may choose to decorate their bedrooms according to personal taste and preference.

10:44C-6.14 Bathrooms

- (a) Every residence shall be provided with one flush-type toilet and sink for every four persons served and one bathtub or shower for every six persons served living in the home.
- (b) Every toilet, sink, bathtub, or shower shall be accessible without passing through any other sleeping unit and shall be available within one floor above or below the room of a person served, unless it is a master bedroom type suite where the bathroom is used solely by that bedroom's occupants.
- (c) Toilet paper, soap and toweling shall be available at each toilet and lavatory for access by each person served living in a home.

(d) Bathroom doors shall be equipped with standard hardware which provides a privacy lock and which can be readily opened from the outside in an emergency. Hooks and eyes, bolts, bars and other similar devices shall not be used on bathroom doors.

10:44C-6.15 Kitchens

- (a) Kitchens shall be clean and well ventilated.
- (b) Containers of food shall be covered and appropriately stored above the floor on shelves or other clean surfaces and kept separate from cleaning supplies.
- (c) Disposable dinnerware shall not be used on a regular basis.
- (d) Refrigeration and storage of food shall be provided at not more than 45 degrees Fahrenheit (seven degrees Celsius). Freezer compartments shall operate at no more than 32 degrees Fahrenheit (zero degrees Celsius).

10:44C-6.16 Basement use

- (a) Basements may be used for storage and laundry, provided they are dry and have adequate lighting.
- (b) Basements may be used as activity rooms if they are dry, warm, adequately lighted and have two independent means of egress, one of which leads directly outside.

10:44C-6.17 Maintenance requirements

- (a) When maintenance is the responsibility of another party, the licensee shall document that the other party has been informed of the need to correct all deficiencies relating to maintenance.

- (b) Accumulation of garbage or waste shall be prevented.
- (c) Pest control services shall be arranged in a timely manner when there is evidence of infestation.
 - 1. The licensee shall retain documentation of service.
- (d) Floors, walls, ceilings, and other interior surfaces shall be kept clean and in good repair.
- (e) At each residence, doors opening to the outside and outside walkways shall be kept free of ice, snow, leaves and other hazards.

APPENDIX

TABLE OF COMMUNICABLE DISEASES

Respiratory

Illnesses

Gastro-Intestinal

Illnesses

Contact

Illnesses

Chicken pox

Giardia lamblia

Impetigo

German measles*

Hepatitis A*

Lice

Hemophilus

Salmonella*

Scabies

Influenza*

Shigella*

Measles*

Meningococcus*

Mumps*

Strep throat

Tuberculosis*

Whooping cough*

*Reportable diseases, as specified in N.J.A.C. 8:57